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RAB Position Paper on Third-Party Litigation Funding

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Executive Summary

- Third-Party Litigation Funding (TPLF) is an arrangement where an outside party finances litigation in exchange for a share of the proceeds. The EU Representative Actions Directive (RAD) has expanded access to collective redress across the European Union (EU), with TPLF emerging as a mechanism to finance these claims.
- TPLF is meant to play a positive role in facilitating access to justice, particularly for claimants who could not otherwise afford litigation costs. However, funders in the EU reportedly accept only 5% of submitted cases, suggesting that this access-to-justice argument may be overstated. Recent case law further highlights a number of challenges that demand careful attention: reduced claimant compensation, loss of control over proceedings, and increased pressure to settle.
- Experience from the United States (US) shows that the use of TPLF has materially altered the litigation system dynamics, driving up costs with direct knock-on effects on liability insurance. Aggressive funding practices have contributed to a 57% increase in claims severity over the past decade.
- It is important that litigation funding operates in a manner that protects claimants and preserves confidence in the integrity and fairness of the collective redress mechanisms. The RAB recommends that the EC include targeted safeguards as part of the 2028 review of the RAD, including measures to prevent conflicts of interest, ensure transparency, and establish capital adequacy requirements for funders.

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1. What is TPLF, and what are the conditions around TPLF in the EU?

TPLF is an arrangement where an outside party (i.e. funder) finances some or all of a claimant's legal costs in return for a share of the proceeds from the case resolution. Where the case is won — whether through settlement or judgment — the funder recovers its original investment plus an additional agreed amount. TPLF agreements are typically non-recourse: if the claimant loses, the litigation funder recovers nothing.[1]

Of the different types of TPLF, these are the most common in Europe:

- **Commercial funding**: covers financing of business disputes and large-scale cases (contract breaches, IP/patent litigation, large arbitrations, insolvency claims, competition law damages, etc.), typically by professional investors seeking profit. This is the predominant form in Europe's TPLF market.[2]
- **Consumer funding**: covers financing of consumer cases (such as personal injury or small contract claims) for consumers who need financial help to pursue legal claims. In the EU, it appears in the context of the Representative Actions Directive (RAD).[3]

2. EU experience on TPLF and observed challenges for claimants

TPLF is a growing practice in the EU. A recent European Commission (EC) mapping study estimates the EU litigation funding market at approximately EUR 1 billion in 2019 (roughly 0.8% of the EU legal services market) and is projected to more than double by 2032, in line with global TPLF growth. Precise numbers of funders are difficult to pin down as no official funder registry exists. However, survey-based estimates suggest that close to 300 litigation funding entities are active across the EU.[4]

The Netherlands illustrates the scale of this shift particularly clearly. The Netherlands has been operating an opt-out[5] collective action regime since before the introduction of the RAD, and an average of 21 class actions per year have been initiated.[6] The number of active funders in the Dutch market has grown significantly, reaching at least 47 as of 2023, a roughly 940% increase since 2015.[7] The ability to conduct proceedings in English contributes to cross-border appeal.[8]

[1] European Law Institute, Principles governing the third-party litigation funding, 2024, link.

[2] European Parliament resolution with recommendations to the Commission on Responsible private funding of litigation (2020/2130(INL)), 2022, link.

[3] European Law Institute, Principles governing the third-party litigation funding, 2024, link; Representative Actions Directive (EU) 2020,1828, link.

[4] EU Commission, Mapping Third Party Litigation Funding in the European Union, 2025, link.

[5] In the Netherlands, an opt-out class action mechanism (under the WAMCA law) means that Dutch residents who fit the description of a harmed group are automatically included in a lawsuit unless they actively choose to leave (opt-out) at specific times, like after a representative is appointed or a settlement is reached, making the court's decision binding on those who stay in.

[6] CMS, European Class Action Report, 2025, link; Xandra Kramer, The quest for funding under the Dutch WAMCA: Third party funding and the viability of a procedural fund, 2024, link.

[7] ECIPE, Mass litigation and the future of litigation funding in Ireland and Europe, 2025, link.

[8] The Code of Conduct for Dutch lawyers prohibits contingency fees; however, this prohibition does not apply to non-Dutch law firms that fund class actions brought by other law firms.

TPLF is clearly meant to play a positive role in facilitating access to justice, particularly for claimants who could not otherwise afford litigation costs. At the same time, recent case law highlights several challenges that demand careful attention:[9]

- **Funder interests precede claimant interests**: In some cases, funders influence key decisions, including how the case is run and whether to settle. Courts have raised concerns where this results in the case being driven by the funder's financial interests rather than the claimant's legal rights.[10]
- **Disproportionate funder returns reduce claimant compensation:** Funders may take a substantial share of any money awarded, sometimes before claimants receive payment. Courts have intervened where such arrangements leave claimants with significantly less compensation than expected or considered fair.[11]
- **Claimants are exposed to costs of funder insolvency or withdrawal**: If a funder withdraws or becomes insolvent, claimants may be left without means to continue proceedings and exposed to adverse-cost risk. In most EU jurisdictions, funders cannot be held directly liable for adverse costs because they are not formal parties to the case; that risk instead falls on the named claimant or representative entity.[12]

3. US experience on TPLF and observed challenges for re/insurance pricing and availability

Liability claims inflation in the US, fuelled in part by aggressive funding practices, has contributed to a 57% rise in claims costs over the past 10 years, peaking at an annual growth rate of 7% in 2023.[13] Average jury awards have more than doubled over the same period, and "nuclear verdicts" — those over USD 10 million — now occur regularly.

The US insurance lines most affected are the casualty segments, such as commercial motor (trucking) and general liability, followed by the financial lines, such as Directors & Officers liability, medical malpractice, marine, and aviation.[14] Recent market data indicates that commercial auto and umbrella liability recorded the steepest premium increases of any line in Q1 2025, rising 10.4% and 9.5% on average, respectively, with TPLF widely cited as the primary driver of growing verdict sizes in those segments. Traditionally, large corporates were the prime targets of TPLF-backed litigation. However, recent analysis suggests that funders are increasingly targeting small and medium-sized enterprises, as courts assess compensation based on the severity of the injury rather than the defendant's size. This shift broadens the reach of TPLF-backed litigation and compounds the affordability challenges for businesses previously considered less exposed.[15]

These dynamics directly affect re/insurance pricing and availability. TPLF drives up not only claims severity but also their duration, pushing up legal expenses and ultimate losses. Carriers respond by applying stricter scrutiny to affected accounts and, in some cases, reducing available limits or withdrawing cover entirely from higher-risk classes. Some carriers have ceased providing cover for certain risks altogether — including umbrella, auto, and product liability — further constraining re/insurance capacity.

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[9] European Law Institute, Principles governing the third-party litigation funding, 2024, link.

[10] In the Dutch Airbus case, the court found that funders had a "far-reaching degree of control" over a claim foundation's governance, link.

[11] ECLI:NL:RBAMS:2023:6694, link.

[12] Personal Digital Telephony Limited and another v the Minister for Public Enterprise, Ireland and others 2017 ESC25, link.

[13] Swiss Re Institute, Litigation costs driving claims inflation – indexing liability loss trends, 2024, link.

[14] Munich Re, The impact of social inflation on US commercial liability claims, 2022, link; Swiss Re Insights, European liability dynamics: The rise of mass litigation and social inflation, 2025, link.

[15] Swiss Re Insights, Verdicts on trial: The behavioural science behind America's skyrocketing legal payouts, 2025, link.

The ongoing losses and uncertainty associated with TPLF have produced a materially more cautious underwriting posture across these liability lines. Carriers are scrutinising risks more heavily (for example, examining five to ten years of prior losses on casualty accounts) and are increasingly reluctant to offer generous limits. Insureds in general liability, umbrella/excess, and commercial auto are finding it progressively harder to obtain the level of cover previously available or are required to pay significantly higher premiums to do so.

Against this background, underwriting and claims management practices are evolving. Granular exposure assessments are becoming standard, enabling better portfolio diversification across industries and geographies and more accurate pricing. Insurers are also reassessing reserving practices and claims handling protocols to account for longer-tail exposures and the growing influence of litigation funders on settlement dynamics.

4. Can the US re/insurance experience be imported into Europe?

Not fully, primarily because of a number of structural differences, which have so far delayed US-style liability claims inflation in the EU. Such key structural differences[16] include:

- **Cost rules:** The "loser pays" principle applies broadly in the EU, requiring a claimant who loses to pay the defendant's legal costs. This acts as a meaningful deterrent to weak or speculative claims. In the US, each side generally bears its own costs (no loser-pays), enabling plaintiffs (and funders) to pursue high-risk cases without financial downside, contributing to a higher volume of speculative litigation.
- **Damages and juries:** US courts permit jury trials in civil cases and frequently allow punitive damages, sometimes producing awards far above actual harm. With no general cap on contingency fees or funder returns, the upside in large cases is effectively unlimited — a powerful structural incentive for TPLF. By contrast, the vast majority of EU countries do not use juries in civil litigation, and punitive damages are rare or strictly limited.
- **Collective actions and enforcement:** The US has a long-established, plaintiff-lawyer-driven opt-out class action system enabling large-scale mass tort and consumer lawsuits. The EU only recently introduced broader collective redress through the RAD[17], and this is mostly opt-in (except for the Netherlands, Portugal, Cyprus, Slovenia, Hungary and potentially Spain) and is limited to consumer protection claims.
- **Procedural framework:** The EU's civil law systems (except for Ireland) differ materially from the US common law framework in terms of procedural rules, judicial discretion, and the role of precedent in shaping TPLF oversight. EU civil procedure is typically more inquisitorial and rule-bound, with stricter timelines and significantly limited pre-trial discovery. The US's expansive discovery process and adversarial dynamic raise legal costs and increase claimant leverage — both factors that attract litigation funders.

However, the structural differences do not preclude an increase in litigation activity. In fact, with the RAD now nearly fully transposed and the forthcoming Product Liability Directive (PLD) set to expand liability to digital products, the conditions for increased litigation are taking shape. These developments are likely to accelerate the uptake of TPLF across the EU, building on a trend that is already underway.

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[16] Transatlantic Perspectives: Comparative Law Framing, 2019, link.

[17] Representative Actions Directive (EU) 2020,1828, link.

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5. Call for action: safeguards to protect consumers and minimise the risk of an EU re/insurance situation similar to the US one

TPLF is already reshaping the EU litigation landscape, and its pace of growth is accelerating. Introducing adequate safeguards before the market matures further would support both consumers' interests and re/insurance pricing and availability in Europe.

The RAB recommends that the EC consider the following safeguards when evaluating the 2028 review of the RAD, drawing on the European Parliament's 2022 resolution on responsible private litigation funding.[18]

1) Transparency

- ✓ **Full disclosure:** Require claimants to disclose litigation funding agreements (appropriately redacted) to both the court and the defendant. Courts should have access to the unredacted version of the litigation funding agreement to allow full judicial review.
- ✓ **Identity of funders:** Mandate disclosure of funders' identities and the ultimate sources of invested capital to all parties involved.
- ✓ **Authorisation and supervision:** Establish a regime for authorisation, registration, and ongoing supervision of funders, consistent with standards applied to other financial services actors.
- ✓ **Capital adequacy**: To avoid undercapitalisation risks, require funders to demonstrate sufficient financial capacity to meet all obligations arising from litigation, including potential adverse-cost orders and counterclaims. Supervisory authorities[19] should verify this as part of funder authorisation, including appropriate checks on the origin of funds and compliance with anti-money laundering rules.

2) Protection of claimants' rights

- ✓ **Financial responsibility:** Impose joint liability for adverse costs and set minimum capital adequacy standards requiring funders to demonstrate sufficient financial resources throughout the proceedings, thereby preventing speculative or underfunded participation.
- ✓ **Responsibility for adverse costs:** Enable courts to hold funders liable for adverse costs—including damages arising from counterclaims—proportionate to the share of the proceeds to which they are entitled under the funding agreement, in cases where the funded claimant loses.
- ✓ **Claimant control:** Prohibit funders from influencing litigation strategies, procedural decisions, or settlement outcomes to preserve the claimant's autonomy and the independence of their legal counsel.
- ✓ **Fair recovery structure:** Prioritise compensation for claimants and beneficiaries, with clear limits on funders' and intermediaries' fees.
- ✓ **Regulatory oversight:** Require litigation funding agreements to be reviewed by a designated authority or specialised court in each EU Member State to ensure compliance and consistent application of case law.
- ✓ **Clear and accessible contractual terms:** Require funding agreements to be drafted in plain, consumer-friendly language, enabling all claimants (including vulnerable consumers) to understand their rights, obligations, risks, and costs.

[18] European Parliament resolution with recommendations to the Commission on Responsible private funding of litigation (2020/2130(INL)), 2022, link.

[19] Supervisory authority means a public authority designated by a Member State to be responsible for granting, suspending or withdrawing the authorisation for litigation funders, and for supervising the activities of litigation funders, European Parliament resolution with recommendations to the Commission on Responsible private funding of litigation (2020/2130(INL)), 2022, link.

3) Ethical standards

- ✓ **Conflict of interest rules:** Prohibit funding arrangements that create or conceal conflicts of interest, and require regulators to actively ensure judicial impartiality and claimant protection – for example, by preventing funders from owning or controlling law firms or from accessing confidential information subject to legal privilege.
- ✓ **Fiduciary duties:** Impose explicit fiduciary obligations on funders, requiring them to act in the best interests of claimants. Litigation funding agreements should be subject to the same standards as financial services contracts, where such duties are well established.
- ✓ **Judicial training/exchange of information:** Support education and training for judges and other judicial actors to detect and address misuse of TPLF, in particular, the filing of numerous weak claims across jurisdictions to pressure defendants into settlement, so-called "shock and awe" tactics.

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