Insurance Europe key messages on Third-Party Litigation Funding (TPLF)

European insurers acknowledge that third-party litigation funding (TPLF)[1] can be a valuable instrument in facilitating access to justice in certain circumstances. However, in the absence of appropriate regulation, TPLF can negatively impact the share of compensation obtained by claimants and expose funded parties to a loss of control over their claims and increased settlement pressure. Legal actions can therefore become increasingly driven by financial return rather than appropriate redress.

These concerns are not limited to consumer litigation. The growing use of TPLF in business-to-business disputes, including cases involving SMEs, raises broader questions about incentives that may encourage excessive or opportunistic litigation against companies. The participation of additional profit-seeking actors introduces an extra cost layer that is driving up litigation expenses, affecting access to and affordability of redress, and ultimately weakening the competitiveness of European businesses operating in an increasingly litigious environment. As such, TPLF has the potential to impact all aspects of litigation, affecting consumers, businesses and the EU economy alike.

It is therefore essential that any future TPLF framework delivers tangible benefits, while upholding the principles of proportionality, fairness, and transparency.

Insurance Europe's recommendations in a nutshell are:

- Introducing EU-level regulatory action on TPLF to ensure a fair, harmonious and transparent litigation landscape,
- Using the European Parliament's (EP) resolution on responsible private funding as a foundation for further discussions, and
- Establishing robust safeguards for private funders including on the prevention of conflicts of interests, transparency and capital requirements.

1 Litigation funding must be distinguished from financial products, such as legal protection insurance, that cover legal costs and are regulated. Legal protection insurance for instance, has been regulated by Directive (EU) 2016/97 (the Insurance Distribution Directive - IDD) since 2016.

Why action is needed now: rising litigation and unregulated TPLF

TPLF is as a for-profit business model that allows private financiers, investment firms and hedge funds to invest in lawsuits or arbitrations in exchange for a portion of any compensation that may be awarded. Funders use this capital to sign confidential deals with lawyers or qualified entities to fund litigation or arbitration disputes in pursuit of a return on their investments. Because these agreements are confidential, claimants may have little visibility into the financial and strategic decisions that shape their case. With the recent entry into force of key pieces of legislation like the Representative Actions Directive (RAD) and the revised Product Liability Directive (PLD), alongside rising liability claims inflation, TPLF is expected to increase across the EU. In fact, some estimates show that the cost to businesses could exceed EUR 84 billion.[2]

The revised PLD is a particularly telling sign of the shift of the European litigation landscape in the favour of claimants. The PLD introduces the expansion of recoverable damages, an eased burden of proof for claimants, the removal of the minimum claim threshold, rebuttable presumptions and broad disclosure obligations. All these factors are likely to encourage more claims, including high-volume, low-value "nuisance" claims. The changes introduced in the revised PLD could also increase the risk of frivolous litigation and potential forum shopping. Furthermore, courts may become overloaded with disclosure applications, particularly in member states with limited experience in managing broad disclosure. The eased burden of proof may prompt a rise in claims where claimants have traditionally encountered difficulties in proving causation.

Private funders currently operate in a largely unregulated landscape, giving rise to significant legal and ethical concerns, including:

- **Profit-driven decision-making:** Funders distort the typical lawyer-client relationship, by prioritising return on investment over appropriate redress.
- **Rejection of meritorious claims:** Claims lacking sufficient financial return may be declined, undermining access to justice.
- **Undue influence:** Funders can influence the litigation strategy to maximise returns or recover their investments faster, making litigants lose control over their own case, and sometimes pressuring defendants into settling claims, when they may not wish to.
- **Disproportionate shares of awards and deprioritisation of the compensation of victims:** Funders can leave harmed claimants with little to no redress, by collecting a significant portion of any compensation awarded. Funding agreements might provide a fixed agreed return (not necessarily based on a percentage), paid to funders as a priority, while claimants are compensated at a second stage, potentially to a lesser extent. The terms of these agreements are hidden behind a veil on confidentiality.
- **Withdrawal risk:** Funders may exit cases mid-litigation, leaving consumers exposed to financial and procedural risks.
- **No liability for adverse costs:** If the funded claim is unsuccessful, funders often leave the claimant to bear the costs alone, particularly where after the event (ATE) coverage has not been obtained.
- **AML/CFT risks:** The lack of oversight of funders also poses risks in terms of AML/CFT and competition law. These unregulated funds can be used by states or competing companies to finance unfounded legal proceedings with the aim of laundering money.

These distortions undermine procedural fairness and erode trust in collective redress. They can also increase the overall cost of claims by driving up settlement values and prolonging disputes, leading to higher defence and administrative expenses for insurers. Over time, these additional costs feed through into premiums and can reduce the availability of certain protection products, affecting access to affordable insurance cover and leading to high uninsured legal liability risks for businesses.

National approaches to TPLF[3]

Across the EU, approaches to TPLF vary significantly:

- The **Netherlands** and **Germany** have taken steps to introduce oversight mechanisms or safeguards in collective redress proceedings, while **Spain** requires disclosure of funding arrangements in certain cases to prevent conflicts of interest.
- **Italy** has introduced disclosure obligations in the context of representative actions.
- **France** recognises the third-party financing of lawsuits, but only for class actions. Funders must not interfere

2 ECIPE - The Impact of Increased Mass Litigation in Europe
3 Dac Beachcroft - Social Inflation - A thematic and jurisdictional guide - October 2025

in the litigation process in a manner that creates a conflict of interest to the detriment of the represented parties.
- By contrast, **Ireland** fully prohibits TPLF.

Differences in member states' approaches to TPLF risk incentivising funders to initiate actions in jurisdictions perceived as more favourable, thereby fostering forum shopping. Moreover, as the RAD and other recent EU initiatives expand avenues for mass litigation, these divergences are likely to become more pronounced. Regulatory action at EU level is therefore necessary to ensure a coherent litigation framework as well as a high and consistent level of protection for both claimants and defendants, regardless of where proceedings are initiated.

Case law examples

Funders are increasingly present in the European litigation landscape. They are already leaving their mark on national case law in a concerning manner:

- The **choice of lawyer** may be determined by the funder: Y for Tesdo EOOD v City Cash and Tesdo EOOD v Profi Credit Bulgaria; Y for Consumers Legal Aid Association v Praktiker EOOD; N for Group of NGOs and individuals 'CLEAN AIR' v Sofia Municipality. In the Dutch Airbus case, courts found a claim foundation partly inadmissible due to excessive funder influence and dependence, including far-reaching control over governance, creating a risk that proceedings were steered to maximise funder profit rather than protect investors' rights.
- **Forced settlements:** funders might rather lean towards a settlement than the claimants, as funders bear the litigation risk. However, an agreement that allowed the funder to settle with the defendant while not allowing the claimant to opt out is not necessarily unlawful: Oberlandesgericht; OLG München Germany.
- **Lack of protection for the claimant in termination of funding agreements:** it was reported in the EC's Mapping TPLF in the EU study that according to various national case law, funders may terminate the litigation funding agreement if the opponent party becomes insolvent or if funders have realised that the proceedings are no longer viable, for instance, if the applicable case law is overruled. Such contract termination clauses are related to events that are not under the claimant's control (i.e. not resulting from the claimant's breach of its contractual obligations) and they may, therefore, result in a lack of protection for the claimant. Similarly, it risks leaving a defendant to bear sunk litigation costs.
- **High returns:** the Court of Appeal of Munich upheld that **a remuneration fee of 50%** is not contrary to German public policy: Germany Court of Appeal of Munich, 31.3.2015 -15 U 2227/14. In the Dutch Fortis/Ageas investor settlement, courts scrutinised success fees and funding arrangements after concerns emerged that substantial portions of the **EUR 1.3 billion** settlement might not reach harmed shareholders.

Looking forward: Insurance Europe's recommendations

Insurance Europe believes that it is crucial to introduce an EU-level regulatory action on TPLF to provide appropriate safeguards in litigation funding. The industry strongly supports the safeguards introduced in the EP's resolution of 13 September 2022 on the responsible private funding of litigation as a sound basis.

Specifically, any future TPLF framework should include:

- A **cap on funders' entitlements from final settlements or awards/judgments**, proportionate to their investment and risk,
- **Mandatory disclosure of funding agreements** to courts and relevant parties, enabling assessment of conflicts of interest, funder influence and the continuity of funding.
- Judicial oversight of settlements influenced by funders to protect claimants' and defendants' interests.
- A **European system of registration** of private funders,
- **Joint and several liability of funders for adverse costs**, including damages resulting from counterclaims by the defendant,
- A prohibition of contingency fees, where fees for lawyers, claims collection vehicles, or **funders are calculated as a percentage of amounts awarded**,
- A requirement that **funders receive payment only after claimants or defendants have obtained redress**,
- A **prohibition of foreign or sovereign state funding**,
- **Application of financial and fiduciary rules** to funders to mitigate money-laundering risks.

These measures are crucial to prevent abusive claims, preserve access to justice and ensure fairness in litigation.