

Procedure file

Basic information		
INL - Legislative initiative procedure	2020/2130(INL)	Procedure completed
Responsible private funding of litigation		
Subject 4.60.06 Consumers' economic and legal interests 7.40.02 Judicial cooperation in civil and commercial matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Legal Affairs	 VOSS Axel	15/06/2020
		Shadow rapporteur	
		 BENIFEI Brando	
		 TOOM Jana	
		 TOUSSAINT Marie	
		 LEBRETON Gilles	
		 BUXADÉ VILLALBA Jorge	
		 AUBRY Manon	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Economic and Monetary Affairs	The committee decided not to give an opinion.	
European Commission	Commission DG Justice and Consumers	Commissioner REYNDERS Didier	

Key events			
17/09/2020	Committee referral announced in Parliament		
14/07/2022	Vote in committee		
25/07/2022	Committee report tabled for plenary	A9-0218/2022	Summary

13/09/2022	Results of vote in Parliament		
13/09/2022	Decision by Parliament	T9-0308/2022	Summary

Technical information	
Procedure reference	2020/2130(INL)
Procedure type	INL - Legislative initiative procedure
Procedure subtype	Request for legislative proposal
Legal basis	Rules of Procedure EP 47
Stage reached in procedure	Procedure completed
Committee dossier	JURI/9/03606

Documentation gateway					
Committee draft report		PE680.934	17/06/2021	EP	
Amendments tabled in committee		PE695.342	16/07/2021	EP	
Committee report tabled for plenary, single reading		A9-0218/2022	25/07/2022	EP	Summary
Text adopted by Parliament, single reading		T9-0308/2022	13/09/2022	EP	Summary

Responsible private funding of litigation

The Committee on Legal Affairs adopted a legislative initiative report by Axel VOS (EPP, DE) containing recommendations to the Commission on responsible private funding of litigation.

Commercial third-party litigation funding (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. Collective redress is only one type of litigation in which TPLF is currently used, with other examples being arbitration, insolvency proceedings, investment recovery, anti-trust claims and others.

Need for common EU-wide minimum standards

TPLF is a practice that is developing into a market for litigation services without a specific EU-wide legislative framework in place. According to the report, TPLF could, if properly regulated, be used more often as a tool to support access to justice, especially in countries where legal costs are very high or for women and marginalised groups with additional funding barriers.

Members are convinced that in order to ensure access to justice for all and that justice systems prioritise redress for injured parties, and not the interests of private investors who might only be seeking commercial opportunities from legal disputes, it is necessary to establish common minimum standards at Union level, which address the key aspects relevant to TPLF, including transparency, fairness, and proportionality. The aim of such a regulatory regime would be to regulate litigation funding activities by litigation funders.

Proposed European Directive

The report requested the Commission to:

- closely monitor and analyse the development of third party litigation funding in the Member States, both in terms of the legal framework and practice, with particular attention to be given to the implementation of [Directive \(EU\) 2020/1828](#);
- submit, after the expiry of the deadline for the application of Directive (EU) 2020/1828, namely 25 June 2023, and taking into account the effects of that Directive, to submit a proposal for a Directive to establish common minimum standards at Union level on commercial third-party litigation funding.

The objectives of this Directive are to ensure the harmonisation of Member States rules applicable to litigation funders and their activities, and thus to enable access to justice, while introducing common minimum standards for the protection of the rights of funded claimants and intended beneficiaries in proceedings financed wholly or in part by third-party funding agreements, which apply in all Member States in which litigation funding is permitted.

The report recommended the following:

- the establishment of a system of authorisation for litigation funders, thereby ensuring that effective opportunities are provided to claimants to make use of TPLF and that adequate safeguards are put in place, including through the introduction of corporate governance requirements and supervisory powers to protect claimants and to ensure that funding is only provided by entities that are committed to complying with minimum standards in terms of transparency, independence, governance and capital adequacy, and to observing a fiduciary relationship vis-à-vis claimants and intended beneficiaries;

- third-party funding agreements should be required to observe a fiduciary duty of care to act in the best interests of a claimant;
- Member States should require litigation funders to demonstrate that they have sufficient capital to satisfy their financial obligations;
- safeguards be adopted to prevent potential conflicts of interest, to lay down claimants rights and require disclosure of details of relationships between litigation funders and the other parties involved;
- just like claimants, litigation funders should be responsible for defendants costs arising from unsuccessful litigation, such as due to an adverse cost award;
- litigation funders should in no case claim unfair, disproportionate or unreasonable reward at the expense of claimants. Save in exceptional circumstances, when the share of any reward claimed by a litigation funder would dilute the award, including all damages amounts, costs, fees and other expenses, available to claimants and intended beneficiaries to 60% or less, it should be presumed unfair and deemed invalid;
- in the interests of transparency, there should be an obligation to inform the relevant court or administrative authority of the existence of commercial funding and the identity of the funder, as well as to disclose third-party funding agreements in full to courts or administrative authorities, upon their request or at the request of the defendant to the court and subject to appropriate limitations to protect any necessary confidentiality;
- supervisory authorities, courts and administrative authorities should have the powers to facilitate the enforcement of legislation. Members recommended the establishment of a complaints system that does not give rise to excessive costs or an excessive administrative burden for Member States;
- lastly, supervisory authorities, courts and administrative authorities, where appropriate in accordance with national procedural law, should have the powers to address abusive practices by authorised litigation funders, while not hindering access to justice for claimants and intended beneficiaries.

Responsible private funding of litigation

The European Parliament adopted by 504 votes to 57, against and 65 abstentions, a resolution of the European Parliament with recommendations to the Commission on Responsible private funding of litigation.

Commercial third-party litigation funding (TPLF) is a growing practice whereby private investors (litigation funders), who are not parties to a dispute, invest for profit in legal proceedings and pay costs and other legal fees, in exchange for a share of any eventual award; whereas collective redress is only one type of litigation in which TPLF is currently used, with other examples being arbitration, insolvency proceedings, investment recovery, anti-trust claims and others.

Need for common EU-wide minimum standards

The TPLF is a practice that is developing into a market for litigation services without a specific legislative framework in place at EU level. According to the Parliament, the TPLF could, if properly regulated, be used more often as a tool to support access to justice, especially in countries where legal costs are very high or for women and marginalised groups who face additional financial barriers.

Regulating TPLF should go hand in hand with policies enhancing access to justice for claimants, such as by lowering legal costs, by providing adequate public funding to civil society organisations, including consumer protection organisations, or by promoting other practices such as legal aid or crowdfunding.

Members are convinced that in order to ensure access to justice for all and that justice systems prioritise redress for injured parties, and not the interests of private investors who might only be seeking commercial opportunities from legal disputes, it is necessary to establish common minimum standards at Union level, which address the key aspects relevant to TPLF, including transparency, fairness, and proportionality.

The aim of such a regulatory regime would be to regulate litigation funding activities by litigation funders. Such a regime should regulate funding activities in relation to all types of claims, regardless of the claims nature. It should be without prejudice to existing international, Union and national law allowing claims to be brought, in particular law on the protection of the collective interests of consumers, on environmental protection, and law governing insolvency proceedings or liability.

Proposal for a European directive

Parliament called on the Commission to:

- closely monitor and analyse the development of third party litigation funding in the Member States, both in terms of the legal framework and practice, with particular attention to be given to the implementation of Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers;
- present, after the expiry of the deadline for the application of Directive (EU) 2020/1828, namely 25 June 2023, a proposal for a Directive to establish common minimum standards at Union level on commercial third party litigation funding.

The Directive should ensure the harmonisation of Member States' rules applicable to third party funders and their activities, thus allowing access to justice, while introducing common minimum standards for the protection of the rights of funded claimants and intended beneficiaries in proceedings financed in whole or in part by third party funding arrangements, which apply in all Member States where litigation funding is permitted.

The resolution recommended the following:

- the introduction of an authorisation system for third party funders to ensure that applicants have an effective opportunity to use the TPLF and that adequate safeguards are in place, including the introduction of corporate governance requirements and supervisory powers to protect applicants and ensure that funding is only provided by entities committed to complying with minimum standards in terms of independence, transparency, governance and capital adequacy, as well as to maintaining trust and confidence in applicants and intended beneficiaries;
- third-party funders should be bound by a fiduciary duty of care requiring them to act in the best interests of a claimant; litigation funders cannot have undue control over the legal proceedings they fund; such control over the legal proceedings must be the responsibility of the

claimant and their legal representatives;

- Member States should require third party funders to demonstrate that they have sufficient own funds to meet their financial obligations;
- safeguards should be adopted to prevent potential conflicts of interest, define the rights of applicants and require disclosure of details of the relationship between third party funders and other parties involved;
- third-party litigation funders should not be permitted to abandon funded parties in litigation at any stage in the litigation process, leaving claimants solely responsible for all costs of the litigation, which may have only been pursued due to the involvement of the funder; stresses, therefore, that contractual arrangements on the basis of conditional funding should be considered void;
- third-party litigation funders should in no case claim unfair, disproportionate or unreasonable reward at the expense of claimants. Only in exceptional circumstances should agreements between third party funders and claimants depart from the general rule that a minimum of 60% of the gross settlement or damages is paid to claimants;
- in the interests of transparency, there should be an obligation to inform the competent court or administrative authority of the existence of commercial funding and the identity of the funder, as well as full disclosure of third-party funding agreements to courts or administrative authorities, at their request or at the request of the defendant, and subject to appropriate limitations to protect any necessary confidentiality;
- supervisory authorities, courts and administrative authorities should: (i) have the necessary powers to facilitate the enforcement of the legislation; (ii) have the necessary powers to address abusive practices by authorised litigation funders, while not hindering access to justice for claimants and intended beneficiaries. Members recommended that a system for handling complaints be put in place which does not create excessive costs or administrative burdens for Member States.

Transparency			
MELCHIOR Karen	Member	08/09/2022	Open Future