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Access to Justice or Commercialisation of Litigation? Third-Party Litigation Funding in EU Collective Redress

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Summary

The thesis analyses one of the most debated issues in EU civil procedural law following the adoption of the Representative Actions Directive in 2020. The Directive introduced a harmonised framework for collective redress within the EU, making it possible to bring both collective compensatory and injunctive actions. At the same time, however, it also created important practical and procedural challenges, particularly regarding the funding of representative actions. Since the Directive allows only non-profit consumer organizations, so-called qualified entities, to bring claims on behalf of collective claimants, it offers very limited funding options, which create procedural flows.

In this context the third-party litigation funders become necessary, that they are not a party to the dispute but only financing the representative actions for the return of remuneration and benefiting to the access to justice. This understanding is new to the EU law, and it creates some practical and theoretical issues. One of the main issues is the fear of this practice will commercialise the justice system and litigation. So, the thesis is taking to analyse this tension between commercialisation of justice and access to justice ideas, if somehow this tension can be regulated.

For this purpose, the thesis first analyses the development of collective redress and the emergence of TPLF within the EU legal framework, with particular focus on the RAD. It then examines the legal and theoretical foundations of access to justice and the commercialisation debate surrounding litigation funding. Furthermore, the thesis analyses the current EU regulatory framework and compares selected national approaches towards TPLF, including both restrictive and more permissive models. Finally, the thesis evaluates whether a more coherent approach towards TPLF may be needed within the EU framework in order to balance effective access to justice with the protection of procedural integrity and fairness.

Preface

By writing this thesis, I am closing one of the most unforgettable chapters of my life. I am deeply grateful that I pushed myself to pursue the dreams I had and to create the student life I had always imagined. I am thankful for every connection I have made and every opportunity to learn from different people and cultures. Along this journey, I would first like to thank Lund University for accepting me and giving me the opportunity to study here. I am also grateful to the Swedish Institute Scholarship programme for supporting and financing my studies in Sweden.

I would like to express my sincere gratitude to my supervisor, Professor Xavier Groussot for his constant support and guidance throughout the process and also showing us, teaching is more than explaining legal terms, but also passion and love for your profession is a key part of the whole journey. I am also grateful to the professors and friends who became part of this journey and helped shape this special chapter of my life, and my special thanks go to Dr. Laurianne Allezard for being such a valuable friend during this journey.

I would also like to thank my teammates from the European Law Moot Court Competition – Tea, Emilia and Emma – for their endless love and support. Without their encouragement and contributions, this thesis would not have been possible. We shared six months of intense preparation, long hours in the library, moments of exhaustion, and nights filled with laughter and support. Through this experience, I learned that life sometimes takes us in different directions while we continue chasing our dreams. I am truly grateful that I had the opportunity to share this meaningful path with them.

Finally, I would like to thank my family for always believing in me, supporting me, and encouraging me to pursue my goals. And of course, I am especially thankful to my fiancé, who has been my greatest supporter through both the good and difficult moments. After everything, I feel incredibly lucky.

List of Abbreviations

TPLF – Third-party litigation funding

EU – European Union

TFEU – Treaty on the Functioning of the European Union

CFR – Charter of Fundamental Rights of the European Union

RAD – Representative Actions Directive

EP – European Parliament

EC – European Commission

CJEU – Court of Justice of the European Union

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

WAMCA – Dutch Act on the Settlement of Mass Damage in Collective Action

EPRS – European Parliamentary Research Service

UNSDGs – United Nations Sustainable Development Goals

UWG – German Unfair Commercial Practices Act (Gesetz gegen unlauteren Wettbewrb)

VDuG – German Act on the Enforcement of Consumer Rights (Verbraucherrechtedurchsetzungsgesetz)

1 Introduction

1.1 Background

Third-party litigation funding (‘TPLF’) is a relatively new concept within European Union (‘EU’) legal terminology. Its growing importance has largely emerged alongside the development of collective redress mechanisms, which themselves continue to evolve within the EU legal framework. Collective redress has been promoted as an effective and more accessible way for claimants to seek judicial protection, while also enabling courts to handle mass claims more efficiently. However, collective actions create almost as many challenges as they solve. In particular, they are often costly and procedurally complex, especially where qualified entities are required to operate on a non-profit basis. In the absence of sufficient traditional funding mechanisms, a growing need has emerged for external financial support through third-party litigation funding.

The discussions surrounding TPLF have developed differently across jurisdictions, with both its advantages and risks being widely debated. On the one hand, TPLF is increasingly viewed as an important tool for improving access to justice, particularly in mass claims and collective proceedings where litigation costs may otherwise prevent claims from being brought. On the other hand, concerns have been raised regarding the potential influence of funders over litigation, conflicts of interest, abusive litigation practices, and more broadly, the commercialisation of justice.

At the EU level, the Representative Actions Directive (‘RAD’)[1] is currently the main legislative instrument addressing the issue of third-party funding in collective redress. Under Article 10, the Directive seeks to introduce safeguards aimed at preventing abusive control over litigation and protecting the independence of qualified entities. Nevertheless, the diverging approaches adopted by Member States demonstrate that significant uncertainty remains regarding whether the current EU framework is sufficient to regulate TPLF effectively or whether further harmonisation and more detailed regulation may become necessary in the future.

1.2 Purpose and Research Question

The purpose of this thesis is to analyse the nature and role of TPLF within the EU collective redress framework by examining the tension between two

[1] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC

competing considerations: access to justice and the commercialisation of litigation.

While the TPLF is often presented as a mechanism capable of improving access to justice by enabling financially difficult claims to proceed, it has also raised concerns about the increasing involvement of commercial interests within the justice system. In several Member States, concerns relating to the commodification of justice, funders' influence over litigation, and procedural fairness have contributed to more cautious or restrictive approaches towards TPLF.

Against this background, the thesis seeks to examine whether TPLF primarily serves as a necessary tool for effective access to justice in collective proceedings or whether it risks transforming litigation into a market-driven activity. The thesis also considers what types of safeguards may be necessary to prevent abusive control over litigation while preserving effective judicial protection.

The main research question is therefore:

"Does third-party litigation funding strengthen access to justice or contribute to the commercialisation of justice within EU collective redress, and what safeguards are necessary to solve this tension?"

To answer this question, the thesis first examines the development of collective redress and the emergence of TPLF within the EU legal framework. It then analyses the risks and benefits associated with litigation funding, the regulatory approach adopted at EU level, and the different approaches taken by selected Member States and the United States. Particular attention will also be given to the concerns raised in jurisdictions that restrict or prohibit TPLF, especially regarding the commercialisation of justice, procedural integrity, and funders' influence over litigation.

1.3 Delimitations

TPLF is examined in this thesis primarily in the context of collective redress and representative actions under the framework of the RAD. The thesis does not provide a broader analysis of TPLF in other areas, such as international arbitration, insolvency proceedings, or ordinary commercial litigation, except for limited references where necessary to explain the development or operation of litigation funding.

At the national level, the thesis focuses only on selected Member States and their approaches to TPLF, particularly jurisdictions with restrictive or more permissive models of regulation. In addition, the approach of the United States is briefly examined, given its important role in the historical development of TPLF and its influence on contemporary discussions surrounding litigation funding.

The thesis does not provide an exhaustive analysis of all procedural and regulatory risks associated with TPLF. While certain safeguards, including transparency requirements and principles reflected in the ELI–UNIDROIT Model European Rules of Civil Procedure,[2] are discussed, the thesis does not analyse the broader field of civil procedural regulation in detail. Instead, the analysis primarily focuses on the broader tension between access to justice and the commercialisation of justice within the EU collective redress framework.

1.4 Methodology

Firstly, the EU doctrinal research method will be used, which is based on the question "what is law",[3] as it aims to understand the nature and purpose of the law by focusing on positive law. The thesis will analyse the primary sources of law, including the RAD, the Treaty of the Functioning of the European Union ('TFEU'),[4] and relevant case law, as well as secondary sources such as recommendations, reports, studies and resolutions, in order to better understand the legislator's intention while drafting the rules governing TPLF. Apart from these, the views of legal scholars from all over the world and their research will also be important to analyse, considering that TPLF is relatively new to legal terminology and that their analytical works will be useful for exploring the very nature of the issue.

With the help of the descriptive legal method, the thesis will describe the current situation of collective redress actions within the EU, the emergence of TPLF, and later its development within the EU legal framework.

Secondly, the comparative legal method will be used to analyse different approaches to TPLF in different jurisdictions, the safeguards adopted to tackle the challenges, and the issues discussed during the implementation of the RAD, including the perceived advantages and disadvantages of TPLF. Considering the challenges arising in the context of the future harmonisation of TPLF, the comparative method plays a particularly crucial role, as comparative analysis has traditionally been an important tool for harmonisation.[5]

[2] European Law Institute and UNIDROIT, *Model European Rules of Civil Procedure: From Transnational Principles to European Rules of Civil Procedure* (OUP 2021).

[3] Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Wiley-Blackwell 2008), 30.

[4] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47.

[5] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) *Law and Method*, 2.

The use of the normative method will also be necessary, which goes beyond description and evaluates the law. It asks whether the law is desirable, fair, effective, or in need of reform.[6] The thesis will also assess whether further harmonisation or regulatory development may be necessary in order to balance access to justice with concerns regarding commercialisation and funder influence.

The thesis will also incorporate limited empirical analysis through the use of reports, statistical data, and market analyses prepared by EU institutions and other legal actors. These materials will be used to illustrate the practical development of collective actions and TPLF across different jurisdictions and legal sectors within the EU.

The sources will be accessed through CURIA, EUR-Lex, HUDOC, Google Scholar and FINN websites. ChatGPT (OpenAI) and Grammarly will be used as AI tools for language editing purposes.

1.5 Outline

Following the Introduction, the thesis will dive into the evolution and development of collective redress within the EU, the need for litigation funding in collective redress, and finally, the emergence of the TPLF in EU collective redress in **Chapter 2**. This part will also include some empirical data on the use of the TPLF in different jurisdictions to demonstrate its practical and real development.

Chapter 3 will present the main contradictory ideas of the thesis topic, each discussed separately in different sections. The first section will be dedicated to access to justice and how TPLF is considered as a tool for it. The second section will dive into the understanding of the commercialisation of justice, and mainly how it has been assessed in the doctrine. The chapter will be concluded with a discussion of the tension between these two.

Following this, **Chapter 4** will examine regulatory responses to this tension, firstly in the EU regulatory framework and secondly in different national jurisdictions. National approaches will be based on the permissive and restrictive Member States, and discussions at the national level will be held. To think beyond the EU perspective, the USA model for TPLF will also be looked at in this chapter. The chapter will end with a comparative analysis of different approaches and discuss the future of the TPLF, touching on the harmonisation issue, which will also pave the way for the conclusion.

[6] Sanne Taekema, 'Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice' (2018) *Law and Method,* 12.

Lastly, the thesis concluded with a conclusion section, that provides an answer to the tension discussed in the TPLF context. After showing what is regulated in the law, the conclusion will try to give the answer on how the law can be more practical and address the tension.

2 Collective Redress and Litigation Funding in EU Law

The development of collective redress mechanisms within the EU has significantly transformed the discussion on access to justice in mass harm situations. As representative actions became increasingly recognised as an important tool for protecting collective consumer interests, questions concerning the financing of such proceedings also gained great importance. In particular, the high costs and financial risks associated with collective litigation revealed the practical difficulties faced by qualified entities in bringing complex and large-scale claims before courts.

This chapter first examines the evolution of collective redress in EU law, beginning with the early developments that ultimately led to the adoption of the Representative Actions Directive. It then explores the structural financial challenges of collective proceedings, including the role of qualified entities, litigation costs, and the limitations of traditional funding mechanisms. Finally, the chapter analyses the emergence of third-party litigation funding within the EU framework and introduces the broader regulatory and conceptual concerns linked to its growing role in collective redress proceedings.

2.1 EU Framework for Collective Redress

The development of the class actions in the EU Member States has been in different pace before it was harmonized at the EU level. While some Member States have been very sceptical about regulating it in their civil procedural rules, the others have adopted very expansive redress mechanisms.[7] Very first discussions about the collective redress in the EU law context appeared around the need on consumer protection cases in 1970s and 1980s, which were initially only about injunctive cases. However, by the time, injunctive relief was not enough for mass claims. Additionally, the range of the cases was also spread to the new areas of law, keeping its popularity for consumer protection and competition law fields.[8]

2.1.1 Early Developments in EU Collective Redress

The first important judicial developments concerning collective redress in the EU emerged through the CJEU's case law on private enforcement of

[7] Xandra Ellen Kramer and Ilja Tillema, 'The Funding of Collective Redress by Entrepreneurial Parties: The EU and Dutch Context' (2020) 2 *Revista Ítalo-Española de Derecho Procesal*, 166.

[8] *Ibid,* 172

competition law, particularly in *Courage Ltd v Crehan*[9] and *Manfredi and others*.[10] Although these judgments did not directly address class actions or collective redress mechanisms, they laid the groundwork for their later development.

In *Courage and Crehan*, the Court recognised that individuals must be able to claim damages for breaches of EU competition law. The judgment was based on the principle of the full effectiveness of EU law and, implicitly, the principle of effective judicial protection.[11] By confirming a private right to damages under Articles 101 and 102 of the TFEU (Article 85 of the EC Treaty), the Court shifted competition enforcement from an exclusively public model towards a system that also relied on private enforcement.[12] This approach was further developed in *Manfredi*, where the Court confirmed that "any individual" who suffered harm caused by an infringement of EU competition law has a right to compensation.[13] Following *Courage* and *Manfredi*, the European Commission increasingly focused on antitrust damages actions and the broader issue of collective consumer redress.

One of the first broader discussions on collective actions at the EU level appeared in the 2005 Green Paper of the Commission on the damages actions for breach of EC antitrust rules. The Green Paper recognised collective actions as a more effective way for protecting the same interests of consumers in the antitrust disputes, particularly, by consolidating a large number of small claims into a single procedure and thereby reducing litigation costs and saving time.[14]

An important step towards the harmonization of the class actions in the EU law was taken through the Commission Recommendation of 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States (Recommendation 2013/396/EU).[15] Even

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[9] Case C-453/99 *Courage Ltd v Bernard Crehan and Bernard Crehan v Courage Ltd and Others* ECLI:EU:C:2001:465 [2001].

[10] Joined cases C-295/04 to C-298/04 *Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA (C-295/04), Antonio Cannito v Fondiaria Sai SpA (C-296/04) and Nicolò Tricarico (C-297/04) and Pasqualina Murgolo (C-298/04) v Assitalia SpA,* ECLI:EU:C:2006:461 [2006]; Hans-W Micklitz and Andrea Wechsler *What is Collective in EU Collective Redress?* in Xandra Kramer, Stefaan Voet, Lorenz Kodderitsch, Magdalena Tulibacka and Burkhard Hess (eds.), *Delivering Justice: A Holistic and Multidisciplinary Approach* (2022 Bloomsbury Publishing); 68.

[11] Baskaran Balasingham *15 Years After Courage v Crehan: The Right to Damages under EU Competition Law* in European Competition and Regulatory Law Review (CoRe) (2017), 17.

[12] Courage (n 9), para 27.

[13] Manfredi (n 10), paras 89-91.

[14] Commission of the European Communities, Green Paper on Damages actions for breach of EC antitrust rules, Brussels, COM(2005) 672 final, 9.

[15] Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, 2013/396/EU, Brussels.

though it was a non-binding legislative act, it navigated Member States in developing national procedural rules on representative actions. It stated its main objective is facilitating better access to justice and ensuring high level of consumer protection.[16] It required Member States to address fundamental safeguards identified in their national legislation, in order to avoid abusive litigation culture in mass harm situation.[17]

However, the Recommendation 2013/396/EU revealed significant inconsistencies between Member States regarding the structure and availability of collective redress mechanisms. In particular, differences remained concerning the status and financing of qualified entities, the availability of compensatory collective redress, and the use of opt-in or opt-out mechanisms. The Recommendation 2013/396/EU itself largely favoured the opt-in model, which required consumers to expressly consent to participation in collective actions

The Recommendation 2013/396/EU was resulted with the EU Commission's 2018 Report on the implementation of the 2013 Recommendation and it further demonstrated the fragmented development of collective redress across the EU.[18] According to the report by the time, collective redress in the form of injunctive relief mechanisms existed in all Member States within the scope of the Injunctions Directive.[19] However, the compensatory collective redress was available only in 19 Member States and most of them were limited to consumer claims. Only 6 Member States' legislation allow for collective compensation in all legal areas.[20] The Report therefore highlighted the need for a more coherent and harmonised EU framework for collective redress, ultimately paving the way for the adoption of the Representative Actions Directive.

2.1.2 The Representative Actions Directive

After intense negotiations and amendments, the Representative Actions Directive (EU) 2020/1828 was adopted on 25 November 2020 and became applicable on 25 June 2023. The Directive aims to ensure that consumers can protect their collective interest within the EU through representative actions.

[16] *Ibid*, Recital 1.
[17] *Ibid,* Recital 15.
[18] Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law (2013/396/EU), Brussels, 25.1.2018 COM (2018).
[19] *Ibid* 1; Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (O.J.E.U. L 110/30 of 1.5.2009) codifying Directive 98/27/EC.
[20] Commission Report 2018 (n 18), 3.

At the same time, the Directive seeks to balance consumers' access to justice, while it also tackles abusive litigation with setting appropriate safeguards.[21]

The RAD follows minimum harmonization approach and therefore leaves certain regulatory and procedural choices to the discretion of Member States to adjust to their legal and procedural traditions under the principles of national procedural autonomy.[22] In procedural terms, the RAD provides for both injunctive and redress measures, while leaving key elements, such as the choice between opt-in and opt-out mechanisms and funding arrangements to the national legal systems. Although this flexible approach respects national procedural autonomy, it also results in a fragmented landscape in which the effectiveness of collective redress may vary significantly across jurisdictions.

Unlike the terminology commonly used in the United States, The RAD avoids using "class actions" and instead labelled these actions as "representative actions" within EU legal language.[23] According to the RAD, all representative action claims must be initiated by qualified entities, which are created under strict rules, including a non-profit-making character, and must be independent and not influenced by their funders or third parties, as demonstrated in Article 4. The Directive also makes both opt-in and opt-out mechanisms available, while leaving Member States free to determine which model best fits their legal and procedural traditions.[24]

Unlike the Recommendation 2013/396/EU, the RAD does not contain specific rules concerning contingency fees, which is an additional payment must be paid to the lawyer if the case is successful. According to the Commission's 2018 Report, contingency fees were considered a type of expense that might discourage the claimants from bringing actions and impose an additional financial burden. As expressed by the Dutch and Finnish governments, contingency fees are particularly problematic as they contribute to the high costs of the proceedings, especially when combined with the loser pays principle. The Report on this issue concluded that almost all Member States have regulated the matter in their national representative actions, except Slovenia, where it is expected to be regulated in a pending national

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[21] Official EU website on Representative Actions Directive <https://commission.europa.eu/law/law-topic/consumer-protection-law/representative-actions-directive_en> accessed on 12 May, 2026.

[22] Alexandre Biard and Xandra Ellen Kramer 'The EU Directive on Representative Actions for Consumers: A Milestone or Another Missed Opportunity?' (2019) *Zeitschrift für Europäisches Privatrecht* 249, 3.

[23] Karl Wörle and Oskar Josef Gstrein *Collective Data Protection Litigation: A Comparative Analysis of EU Representative Actions and US Class Actions Enforcing Data Protection Rights* (European Journal of Comparative Law and Governance ed. 11 (2024)), 281-282.

[24] RAD (n 1), Recital 43.

legislative act, and therefore there appeared to be no need to include such a provision in the RAD.[25]

The RAD was required to be transposed by 25 December 2022, yet only a few Member States met this deadline, leading to widespread delays across the EU.[26] Although the Directive is now applicable, transposition has progressed unevenly and remains ongoing in certain respects, reflecting continued legal and institutional adjustments by Member States to align with its requirements.[27]

2.1.3 Representative Actions in the EU Practice

In light of the growing use of representative actions under the RAD and the continuing divergences across Member States, it becomes necessary to examine how these mechanisms operate in practice. In particular, attention must be paid to the jurisdictions in which collective actions are the most actively pursued, as well as the areas of law in which they are the most frequently used.

According to the *European Class Action Report 2025* prepared by CMS, class actions in Europe have experienced significant growth over the past five years, evolving from a niche procedural mechanism into a substantial strategic risk for companies operating across various jurisdictions. This expansion has been driven by procedural developments, increasingly active claimant law firms, and the growing role of litigation funding, although the level of risk remains uneven among Member States.[28]

Empirical data from EU Member States further confirms this upward trend. The number of filed class action claims increased from 69 in 2019 to a peak of 135 in 2023, before declining to 97 in 2024. The data reveals that England consistently leads in the number of class action claims across in the past 6 years, maintaining a dominant position. Netherlands shows notable and steady growth, emerging as one of the most active jurisdictions. Germany demonstrates moderate but stable development, while Portugal exhibits a clear upward trend, indicating its increasing relevance in the collective redress landscape.[29]

[25] Commission Report 2018 (n 18), 16.
[26] Official EU website on Representative Actions Directive <https://commission.europa.eu/law/law-topic/consumer-protection-law/representative-actions-directive_en> accessed on 13 May 2026.
[27] Wolf Theiss, *Representative Actions Directive Tracker* <https://www.wolftheiss.com/insights/representative-actions-directive-tracker/> accessed on 13 May 2026.
[28] CMS, *Fifth CMS European Class Action Report 2025* (2025).
[29] *Ibid,* 7.

The report is also important to analyse in which fields of the law class actions are used across the Europe. The analysis demonstrates that consumer and competition law overwhelmingly dominate collective litigation, accounting for approximately 54% of all claims. This confirms that collective redress is primarily used to address mass harm affecting consumers and market practices. This is followed by product liability and personal injury (9%) and data protection disputes (7%), reflecting the growing importance of digital rights and large-scale harm caused by data misuse. Financial services and insurance-related claims also represent a notable share, indicating the continued relevance of collective actions in complex economic disputes. By contrast, areas such as employment, environmental law, and securities disputes remain relatively limited, suggesting that the use of collective mechanisms in these fields is still developing across the EU.

A prominent example in the field of big tech litigation is the case brought against Oracle in the Netherlands. Under the amended Dutch collective actions framework, known as WAMCA,[30] harmed consumers are able to pursue claims through an opt-out mechanism, thereby facilitating large-scale participation in collective proceedings.[31] The Netherlands has emerged as a particularly attractive jurisdiction for mass claims, largely due to its highly developed legal infrastructure, the presence of both large law firms and specialised boutique practices, and the active involvement of litigation funders.[32] In this context, the Amsterdam Court of Appeal recently declared admissible a class action brought by the Privacy Collective Foundation on behalf of approximately ten million Dutch internet users against Oracle and Salesforce. The claim, seeking EUR ten billion in non-material damages for alleged privacy violations and will now proceed to be assessed on the merits.[33]

2.2 The Structural Need for Litigation Funding in Mass Claims

2.2.1 The Role and Limitations of Qualified Entities

According to the RAD, the representative actions must be brought by qualified entities. They can be formed as a consumer organization, a public body, or, in an *ad hoc* form with certain exceptions.[34] Qualified entities can initiate injunctive or compensatory relief depending on the case. There are

[30] Dutch Act on the Settlement of Mass Damage in Collective Action (Wet afwikkeling massaschade in collectieve actie, WAMCA).
[31] Kramer and Tillema (n 7), 176.
[32] CMS Report 2025, (n 28), 46.
[33] Houthoff , *"Damages class actions against Oracle and Salesforce admissible"* (24 June 2024), <https://www.houthoff.com/insights/news/damages-class-action-against-oracle-and-salesforce-admissible/> accessed on 14 May 2026.
[34] RAD (n 1), Recital 28.

strict requirements for the designation of qualified entities. They must operate on a non-profit basis, properly constituted in accordance with national law of the Member State of designation, and given their statutory purpose, they must aim to protect the interests of consumers as provided for by Union law. In addition, they must ensure transparency regarding the sources of their funding. They are required to remain independent and must not be influenced by third parties or litigation funders.[35]

The non-profit character of qualified entities serves to restrict them from having any kind of financial interest in the outcome of proceedings. Similar concerns already appeared in the Recommendation 2013/396/EU. In particular, paragraph 4(a) stated that representative entities should possess sufficient financial resources to represent consumers effectively and in their best interests. Although this requirement was not expressly incorporated into the RAD, it nevertheless demonstrates the practical necessity for qualified entities to secure adequate financial support in order to bring mass claims before courts. This is precisely where the central tension surrounding litigation funding emerges: although qualified entities are expected to operate without profit motives, collective litigation itself remains highly expensive.

Considering the high costs of litigation, it is a significant burden for qualified entities to represent their clients in the mass claims before the court. These costs become even more significant in cross-border disputes, which may involve additional expenses related to translation, application and proof of foreign law, and enforcement.[36] Such costs often include lawyers' fees, court fees, witness and third-party fees, as well as travel-related expenditures.

2.2.2 The Cost Structure of Collective Litigation

Litigation costs can be differed in each Member States, based on the time, amount and varieties of the costs. The idea behind the litigation costs mirrors historical background and legal culture of a country. Such as courts with the highest litigation fees have traditionally served for the wealthier litigants. However, on the other hand very accessible courts with lower fees would have make the burden of the courts very hard to handle. That is very important to mention here that it is one of the duties of the policymakers of the litigation system, to make it both accessible for everyone and quality of use.[37]

Litigation costs in collective proceedings are not limited to the expenses required to bring a claim, but also include the financial risks associated with losing the case. In this context, the allocation of costs becomes particularly

[35] RAD (n 1), Recital 25, Article 4(3)(e).

[36] Adriani Dori and Vincent Richard, 'Litigation Costs and Procedural Cultures – New Avenues for Research in Procedural Law' in Xandra Ellen Kramer and Burkhard Hess (eds), *From Common Rules to Best Practices in European Civil Procedure* (Nomos/Ashgate forthcoming), 23.

[37] *Ibid,* 5.

important, as it may directly affect the willingness of qualified entities to initiate representative actions. The loser pays rule is regarded within EU collective redress as an important safeguard against abusive or speculative litigation.[38]

While the Recommendation 2013/396/EU already encouraged Member States to ensure that the unsuccessful party reimburses the necessary legal costs of the successful party,[39] the RAD places greater emphasis on this principle. Article 12(1) RAD expressly requires Member States to ensure that the unsuccessful party in representative actions for redress measures bears the costs of the proceedings, subject to national procedural rules and exceptions.

At the same time, scholars have argued that the loser pays rule may itself restrict access to justice.[40] Although individual class members are shielded from litigation costs, the loser pays rule places significant financial risk on the class representative, who must pre-finance the action and may be liable for the defendant's costs if unsuccessful.[41] This concentration of risk can discourage representatives from bringing claims, thereby creating a practical barrier to access to justice despite formal consumer protection.[42]

In light of these concerns regarding the scale and allocation of litigation costs, the ELI–UNIDROIT Model European Rules of Civil Procedure (2021) emphasise the need for judicial control to ensure that costs remain reasonable and do not undermine fairness in collective proceedings. Although these rules are non-binding, they serve as an important reference point for Member States and help to guide the development of balanced and effective procedural frameworks, contributing to greater procedural coherence in European civil procedure.[43] In particular, Rule 224 requires courts to refuse approval of settlements where the terms relating to legal and associated costs are manifestly unreasonable. This reflects a broader principle that cost structures in collective litigation should not disproportionately burden the group. The Rules therefore complement existing EU instruments by recommending active judicial oversight to prevent excessive or unfair cost arrangements, especially in cases involving small individual claims where imposing costs on group members would be inappropriate.

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[38] Stefaan Voet, 'Costs and Funding of Collective Redress Proceedings' in Astrid Stadler, Emmanuel Jeuland and Vincent Smith (eds), *Collective and Mass Litigation in Europe* (Edward Elgar Publishing 2020), 266.

[39] Recommendation 2013/396/EU (n 15), para 13.

[40] Elisabetta Silvestri, Stefaan Voet, Teresa Arruda Alvim and Alexandre Biard, 'Overreaching Issues in Representative Actions' in Burkhard Hess, Margaret Woo, Loïc Cadiet, Severine Menétrey and Enrique Vallines García (eds), *Comparative Procedural Law and Justice* (Part X ch 3), para 78.

[41] RAD (n 1), Article 12.2.

[42] Silvestri (n 40), paras 81-91.

[43] ELI–UNIDROIT (n 2), Preamble.

Overall, the high costs and financial risks of collective proceedings demonstrate the need to reduce financial barriers that may limit effective access to justice. This is particularly important within the EU framework, where representative actions are generally brought by non-profit qualified entities with limited financial resources. The RAD itself recognises this concern in Article 20(1), which requires Member States to ensure that the costs of proceedings do not prevent qualified entities from effectively bringing representative actions. In this context, improving and developing effective funding mechanisms becomes essential for ensuring that collective redress functions effectively in practice.

2.2.3 Limits of Traditional Funding Mechanisms

As mentioned earlier, in order to "keep alive" the qualified entities and representative actions, it is important to provide them with the necessary funding. In some jurisdictions, it is common to secure public or private funds, or legal aid from public authorities. According to Recital 70 and Article 20(1) of the RAD, Member States should take measures to ensure that qualified entities are not prevented from bringing representative actions due to the costs of litigation. Such measures may include granting legal aid or providing public funding to qualified entities. However, the Directive also makes clear that Member States should not be required to finance representative actions.[44]

Some scholars argue that this provision could improve the funding situation of associations in certain Member States, particularly in jurisdictions such as Ireland, where civil legal aid is almost non-existent.[45] Nevertheless, public legal aid remains generally limited in the context of representative actions. Numerous requirements usually need to be satisfied in order to obtain legal aid: it is primarily designed for individuals rather than associations, and the legal persons seeking assistance are often required to operate on a non-profit basis.[46]

Nonetheless, there are some examples where legal aid has been used in mass claims, particularly in the Netherlands and in England and Wales. In the *Dexia* case, for instance, the Dutch Legal Aid Board provided support to approximately 4,200 individual class members. In England and Wales, legal aid may be granted where proceedings are expected to produce significant benefits for the wider public. In England and Wales, legal aid may be granted in cases expected to generate broader public benefits. Accordingly, support is

[44] RAD, (n 1) Recital 70.

[45] Biard and Kramer (n 22), 9.

[46] Opinion of AG Mengozzi on Case C-279/09 *DEB Deutsche Energiehandels-und Beratungsgesellschaft mbH v Bundesrepublik Deutschland* ECLI:EU:C:2010:489 [2010], point 80.

generally limited to proceedings that serve the public interest rather than purely individual claims. [47]

Another possible mechanism for financing representative actions is the establishment of special-purpose litigation funds. Certain jurisdictions rely on such mechanisms, including the Collective Actions Fund in Quebec, the Class Proceedings Fund in Ontario and the Public Fund to Finance Class Action Lawsuits in Israel, which seems only three examples of that kind of funding mechanisms.[48] According to the report issued by the Collective Actions Fund in Quebec, the Fund paid out approximately USD 3,5 million in financial aid, that paid the fees of the 41% of the class action cases.[49]

In conclusion, although the RAD encourages Member States to ensure that qualified entities are not prevented from bringing representative actions due to costs, public legal aid remains limited and often insufficient for sustaining collective litigation. Special-purpose funds, such as those in Quebec, Ontario, and Israel, illustrate practical mechanisms to support these actions, yet they are relatively rare. This demonstrates the continuing need for more effective and accessible funding mechanisms capable of supporting collective redress proceedings in practice.

2.3 The Emergence and Operation of Third-Party Litigation Funding

2.3.1 Background and Rationale of TPLF

The increasing costs and financial risks associated with collective litigation have contributed to the emergence of TPLF as an alternative funding mechanism. As discussed earlier, traditional funding mechanisms, such as legal aid and public or private funding, are often insufficient to cover the substantial costs of mass claims. Consequently, external actors who are not parties to the dispute have increasingly begun to provide financial support for litigation.

There is no single universally accepted definition of third-party litigation funding, and scholars describe the concept in different ways depending on its form and operation. Shannon Sahani defines TPLF simply as an arrangement in which a party to a dispute obtains financial support from an external entity

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[47] Voet (n 38), 266.

[48] Adrian Cordina, *Resistance to Third-Party Litigation Funding in Europe: A Legal-Comparative, Economic and Empirical Analysis* (doctoral thesis, Erasmus University Rotterdam 2025), 50.

[49] Voet (n 38), 279.

to cover legal costs, in return for a share of the proceeds if the case is successful.[50]

The development of TPLF in Europe can also be understood in light of the evolution of collective redress mechanisms. In the early stages of collective redress, public authorities and the European Commission provided subsidies to support consumer organisations, particularly in the field of injunctive relief. Over time, however, such public funding proved insufficient. Limited resources, declining legal aid, and the financial risks created with the loser pays rule placed significant constraints on these actors. This created a growing need for more sustainable funding mechanisms to support collective litigation.[51]

The concept of "entrepreneurial litigation" originates from the USA.[52] However, the modern model of TPLF, where the funder is not lawyer but an external investor, developed primarily in Australia. It initially emerged in insolvency proceedings and later expanded into class actions from 2004 onwards, particularly in the fields of securities and competition law.[53]

Historically, in some European countries, particularly the United Kingdom, the doctrines of champerty and maintenance prohibited third parties from supporting or funding litigation in return for a share of the proceeds, due to concerns about increasing the volume of litigation and encouraging frivolous claims.[54] However, these restrictions have been significantly relaxed over time, contributing to the United Kingdom becoming one of the leading centres for TPLF destinations in Europe.

The TPLF market has grown rapidly in recent years, evolving into a multi-billion-dollar global industry. While the United States continues to dominate the market, Europe has gained significant momentum, driven by legal reforms, increasing demand for access to justice, and the rise of high-value litigation. Key jurisdictions such as Germany, the Netherlands, Portugal, and the United Kingdom have played a central role in this expansion, reflecting the growing acceptance of TPLF as an important funding mechanism in Europe.[55]

[50] Victoria Shannon Sahani, 'Rethinking the Impact of Third-Party Funding on Access to Civil Justice' (2020) 69 *DePaul L Rev*, 615.

[51] Kramer and Tillema (n 7), 169.

[52] Cordina *Resistance to Third-Party Litigation Funding in Europe* (n 48), 70.

[53] Kramer and Tillema (n 7), 168.

[54] Cordina *Resistance to Third-Party Litigation Funding in Europe* (n 48), 30.

[55] Adriani Dori and Xandra Ellen Kramer, 'Financing Collective Actions and Strategic Litigation in Europe: The Role of Third-Party Funders in the Shadow of the Procedure' in Alan Uzelac and Stefaan Voet (eds), *The Heroes of the Judicial Periphery: Court Experts, Court Clerks, and Other Actors in the Shadows* (Bloomsbury 2025), 8.

2.3.2 EU Legal Framework on TPLF

TPLF remains only partially regulated at the EU level. Its first appearance in the EU legislative instruments can be traced to the Recommendation 2013/396/EU, which is soft law instrument, followed later by its inclusion in the RAD later. Despite these developments, the EU has not adopted a comprehensive harmonised framework for TPLF. Instead, it has chosen, at this stage, to leave the regulation of the matter largely to the discretion of Member States, while continuing to monitor developments and gather practical experience, particularly in the context of the application of the Directive.[56]

As a result, approaches to TPLF differ significantly across Member States. In some jurisdictions, such as Ireland, TPLF is generally prohibited, while in others, such as Greece, it is not permitted in representative actions.[57] By contrast, several Member States have adopted more permissive approaches, reflecting divergent legal traditions and policy matters.

The Recommendation 2013/396/EU introduced basic principles governing TPLF in collective redress. It emphasised that funding arrangements should not give rise to conflict of interest or lead to abusive litigation.[58] It also addressed transparency by encouraging disclosure of funding sources where necessary, particularly to enable courts to assess potential conflict.[59]

Furthermore, the Recommendation 2013/396/EU also addressed the funding of compensatory collective redress for the risk of distorted litigation incentives.[60] However, this restriction was not carried over into the RAD, which adopts a more flexible stance and leaves the regulation of such funding arrangements to Member States.

The issue of TPLF is specifically addressed in the RAD, which forms part of the European Commission's "New Deal for Consumers" package aimed at enhancing transparency and ensuring a more effective and fair system of consumer protection.[61] TPLF has been one of the hot topics during the preparation of the RAD.[62] While the Directive does not provide a comprehensive regulatory framework for TPLF, it establishes important safeguards, particularly in Article 10. This provision requires Member States to ensure that, in representative actions for redress measures funded by third

[56] European Commission and Council Presidency, *High-Level Forum on Justice for Growth: Report* (18 November 2025), p 9.
[57] European Commission, *Mapping Third Party Litigation Funding in the European Union* (Final report, 21 March 2025), 692.
[58] Recommendation 2013/396/EU (n 15), Recital 19.
[59] Recommendation 2013/396/EU (n 15), para 14.
[60] Recommendation 2013/396/EU (n 15), para 32.
[61] Mapping (n 57), 45.
[62] Biard and Kramer (n 22), 8.

parties, conflict of interest are effectively prevented. In particular, third-party funding must not influence the procedural decisions of the qualified entity or divert the action away from its primary objective of protecting the collective interests of consumers. Moreover, funding by entities with an economic interest in the outcome of the case must not compromise the independence of the representative action or undermine the proper administration of justice.

The debate reached its peak with the publication of a report by the European Parliament's Committee on Legal Affairs (commonly known as the Voss Report),[63] which calls for stronger EU-level regulation of TPLF and was subsequently adopted by the European Parliament as an EP Resolution.[64] In this Resolution, the European Parliament recognised the need to balance improved access to justice with safeguards against abusive third-party litigation funding. It proposed the introduction of an authorisation system for funders, requiring compliance with standards such as transparency, independence, governance, and financial capacity, and called on the European Commission to monitor the development of TPLF in Member States, particularly in relation to the RAD.[65]

In conclusion, the EU approach to third-party litigation funding remains cautious. Rather than introducing strict harmonisation, the current framework focuses on establishing minimum safeguards while leaving significant regulatory discretion to Member States. At the same time, the EU continues to monitor developments in this area, with the expectation that further regulatory intervention may be considered once sufficient practical experience has been gained.

2.3.3 TPLF in EU Member States Practice

First, the Recommendation 2013/396/EU and then the RAD have guided Member States to include and regulate TPLF in their national law. There has been a rapid rise in the regulation of TPLF in the EU market due to the rising demand for access to justice, and the limited availability of other funding mechanisms.

According to the studies prepared by the European Parliamentary Research Service ('EPRS') in 2019 TPLF market in the EU has reached a level representing 15% of the global market.[66] It is expected by 2028, global

[63] Axel Voss, *Report with Recommendations to the Commission on Responsible Private Funding of Litigation* (European Parliament Committee on Legal Affairs, A9-0218/2022, 25 July 2022).

[64] European Parliament, *Resolution of 13 September 2022 with Recommendations to the Commission on Responsible Private Funding of Litigation* (2020/2130(INL)).

[65] Mapping (n 57), 45.

[66] European Parliamentary Research Service (EPRS), *European Added Value Assessment: Third-Party Litigation Funding* (European Parliament 2021), 4.

investment in third-party litigation funding is projected to reach between USD 24 billion and USD 31 billion, reflecting its rapid growth.[67]

Within the EU, Germany and France represent the largest markets for litigation funding, with Germany expected to hold the biggest share, around 23.75% by 2028. Meanwhile, the UK market alone is estimated to be worth between USD 1.3 billion and USD 1.8 billion.[68]

The Study on Mapping TPLF conducted by the European Commission shows in which areas of the law TPLF is used the most within the EU legal market. The survey showed that it is used most in commercial and civil law, followed by the competition/antitrust, consumer protection, financial services, IP, data protection and the others.[69]

The available data suggests that the use of TPLF in collective action cases varies significantly across jurisdictions. In the Netherlands, TPLF appears relatively well developed, with estimates indicating around 80 funded cases per year, many of which involve collective actions under frameworks such as WAMCA.[70] In Germany, the scale is considerably larger, with estimates reaching around 5,000 funded cases in mass claims and class-action-like proceedings, particularly in areas such as cartel damages, although not all strictly qualify as collective actions. By contrast, Belgium shows a much more limited use, with figures suggesting between 5 and 15 funded cases, including some class action-type claims but on a far smaller scale. In Sweden, it is difficult to determine precise numbers, but the data indicates that TPLF is used only in a very limited number of cases, with collective actions remaining rare in practice. Overall, the figures demonstrate a clear imbalance, with the Netherlands and Germany emerging as more active jurisdictions for funded collective litigation, while Belgium and Sweden remain comparatively underdeveloped.[71]

Overall, the uneven development of third-party litigation funding across EU Member States reveals controversial nature of TPLF. It sits at the intersection of facilitating access to justice and raising concerns about commercial influence over litigation. As a result, regulatory approaches vary considerably across Member States, with no fully harmonised framework emerging at EU level. Ultimately, TPLF's dual character explains both its rapid expansion and the persistent regulatory tension surrounding its place within EU legal systems.

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[67] Susanne Augenhofer and Adriani Dori, 'The Proposed Regulation of Third-Party Litigation Funding – Much Ado about Nothing?' (2023) 20(5) *Zeitschrift für das Privatrecht der Europäischen Union*, 201.

[68] *Ibid.*

[69] Mapping (n 57), 638.

[70] Mapping (n 57), 642.

[71] Mapping (n 57), 642–644.

3 Access to Justice vs Commercialization of Litigation

The debate surrounding TPLF is largely shaped by two competing considerations. On the one hand, TPLF is increasingly viewed as a mechanism capable of improving access to justice, particularly in collective proceedings where the costs and financial risks of litigation are substantial. On the other hand, the involvement of profit-driven funders raises concerns regarding the commercialisation of litigation and the transformation of justice into a market-oriented activity.

It is difficult to deny that TPLF may facilitate access to courts in situations where claims would otherwise remain unpursued due to financial barriers. However, the growing role of commercial actors within litigation also raises broader normative and ethical questions concerning the nature and purpose of justice. Really good rhetoric used by Adriani Dori is "the issue is not whether TPLF enables access to justice, but whether the "justice" accessed through TPLF is equivalent to the justice that would exist in the absence of such funding".[72]

This chapter therefore examines both dimensions of the debate. It first analyses TPLF as a mechanism supporting access to justice within the EU legal framework. It then explores the concept of the commercialisation of justice and the doctrinal concerns associated with the growing marketisation of litigation. Finally, the chapter evaluates the structural tension that emerges between these two objectives within the context of EU collective redress.

3.1 TPLF as a Tool for Access to Justice

3.1.1 Legal Background for Access to Justice as a Fundamental Human Right

Access to justice has been recognised as a fundamental right in several international and European legal instruments, including Articles 6 and 13 of the European Convention on Human Rights ('ECHR'), Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter' or 'CFR'), as well as Goal 16 of the United Nations Sustainable Development Goals ('UNSDGs').

Article 6 ECHR guarantees the right to a fair trial in light of the principle of rule of law. Under Article 6(1) of the ECHR, this right is understood to include the right of access to a court and the possibility of initiating

[72] Dori and Kramer (n 55), 20.

proceedings in order to protect one's civil rights.[73] The case law of the European Court of Human Rights ('ECtHR') has made clear that these rights must be "practical and effective".[74] The practical and effective nature of this right requires not only the formal existence of judicial remedies, but also the accessibility of court procedures, including reasonable court fees and litigation costs, as well as fair procedural conditions such as time limits and procedural requirements. The ECtHR clarified in *Podbielski and PPU Polpure v. Poland*[75] that excessive court fees must not impair an individual's right to access to justice. Although Article 6 expressly refers legal aid only in criminal proceedings, the ECtHR has expanded its scope through case law to include civil proceedings where legal assistance is necessary to ensure effective and equal access to courts.[76]

Article 13 ECHR guarantees the right to an effective remedy before a national authority for violations of Convention rights. However, where Article 6(1) ECHR applies, particularly in matters concerning access to a court, it generally provides stronger protection and largely absorbs Article 13.[77] Nevertheless, Article 13 remains relevant in certain situations, such as cases concerning the excessive length of proceedings.

Unlike Article 6 ECHR, Article 47 of the Charter does not distinguish between civil and criminal matters, and it is largely based on Article 13 ECHR.[78] Furthermore, paragraph 3 of Article 47 provides that legal aid must be granted to individuals who lack sufficient financial resources where such aid is necessary to ensure effective access to justice. The Court of Justice of the European Union ('CJEU') has recognized the right to an effective remedy as a general principle of EU law.[79] In accordance with Article 51(1) of the Charter, under the subsidiarity principle, general principles of EU law applies to Member States when they are implementing EU law, requiring them to respect and promote these rights within the scope of their powers. It should also be noted that Article 47 of the Charter has been recognized as having horizontal direct effect, allowing private parties to rely on it in disputes against other private parties before national courts.[80]

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[73] European Court of Human Rights, *Guide on Article 6 of the Convention – Right to a Fair Trial (Civil Limb)* (30 April 2013), 14.

[74] Bellet v France App no 23805/94 (ECtHR, 4 December 1995), para 38.

[75] *Ibid,* paras 65–66.

[76] Airey v Ireland App no 6289/73 (ECtHR, 9 October 1979), para 26.

[77] European Court of Human Rights, *Guide on Article 13 of the European Convention on Human Rights: Right to an Effective Remedy* (updated 28 February 2026), 21, para 63.

[78] Charter of Fundamental Rights of the European Union, *Explanations Relating to the Charter of Fundamental Rights – Article 47 (Right to an Effective Remedy and to a Fair Trial)* OJ 2007 C 303/17.

[79] Case 222/84 *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paras 18–21.

[80] Case C-414/16 *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung e.V,* [2018] ECLI:EU:C:2018:257, paras 78–79.

At the EU level, the Lisbon Treaty has constitutionalised the right to access to justice for the first time in history of EU law[81] through Articles 67(4) and 81(2)(e) of the TFEU.[82]

Article 67(1) TFEU provides that:

"The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States."

More specifically, Article 67(4) states that:

"The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters."

Article 81 TFEU establishes the legal basis for judicial cooperation in civil matters within the EU, particularly in cases with cross-border implications, based on the principle of mutual recognition of judgments. It empowers the Union to adopt measures aimed at ensuring the proper functioning of the internal market, including harmonisation of certain procedural rules. Among its key objectives, Article 81(2)(e) specifically emphasises the importance of ensuring effective access to justice, highlighting it as a central element of EU civil judicial cooperation.

3.1.2 Access to Justice in the TPLF Context

It is important to define the in which context access to justice is considered as tool for TPLF. Shannon Sahani explains the concept that here access is considered as having enough "financial ability to proceed forward in court proceedings".[83] It refers to the ability of a party, whether claimant or defendant, to obtain the necessary resources to pursue or defend a case in court. This concept focuses on the possibility of bringing or resisting a claim, rather than guaranteeing a particular outcome.[84] Accordingly, a system can be considered to provide access to justice where parties are not prevented from litigating due to a lack of financial means, even if other non-financial barriers remain.

[81] Elvira Méndez Pinedo, 'Access to Justice as Hope in the Dark in Search for a New Concept in European Law' (2011) 1(19) *International Journal of Humanities and Social Science*, 9.

[82] Burkhard Hess, 'Access to Justice as a Fundamental Principle of European Union Procedural Law' in Xandra Kramer, Stefan Voet and Adriani Dori (eds), *European Civil Procedure* (De Gruyter 2026), 85-96.

[83] Sahani (n 50), 618.

[84] *Ibid*, 621.

It has long been recognised that the high cost of litigation constitutes a structural weakness in European civil justice systems. As early as the 1990s, concerns were raised that increasing litigation expenses were undermining the effective functioning of access to justice across many jurisdictions.[85] This problem persists today and is particularly visible in collective actions, where costs are significantly higher and must often be borne upfront by a single representative entity. The absence of harmonisation at the EU level has allowed Member States to retain a quasi-monopolistic control over the regulation of litigation costs and procedures, resulting in notable disparities in access to justice across the Union.[86]

In this context, TPLF plays crucial role in alleviating financial barriers. Where the primary obstacle to litigation is economic, TPLF can enable parties to bring or defend claims that would otherwise remain unpursued. It therefore contributes to making collective actions more practically accessible.

However, its role should be understood with caution. TPLF does not guarantee justice but rather facilitates the possibility of accessing it. Even where proceedings are initiated, financial pressures may still shape litigation strategies, potentially limiting how effectively claims are pursued or defended.

Furthermore, the function of TPLF differs depending on the financial position of the parties. For claimants lacking sufficient resources and not eligible for legal aid, the absence of funding may entirely preclude access to justice. By contrast, financially stable actors, particularly corporations, may rely on TPLF not out of necessity but as a strategic tool for risk management, cost allocation, and financial optimisation. This dual role highlights that TPLF operates not only as a mechanism for access to justice, but also as part of a broader trend towards the economic rationalisation of litigation.[87]

The initiative to establish a comprehensive EU-wide legislative framework for collective actions through the RAD has sparked discussions on the potential benefits of harmonising costs and funding measures.

A closer analysis of the RAD reveals that it seeks to strike a balance between facilitating access to justice and preventing abusive litigation. Recital 10 explicitly emphasises this dual objective. Similarly, Article 1 identifies the

[85] Adrian Cordina, 'Is It All That Fishy? A Critical Review of the Concerns Surrounding Third Party Litigation Funding in Europe' (2021) 14(4) *Erasmus Law Review*, 272.

[86] Adriani Dori, Masood Ahmed, Xandra Ellen Kramer and María Carlota Ucín, 'New Avenues for Costs and Funding: The Quest for Access to Justice' in Xandra Ellen Kramer, Masood Ahmed, Adriani Dori and María Carlota Ucín (eds), *Sustaining Access to Justice: New Avenues for Costs and Funding* (Hart/Bloomsbury 2025), 6.

[87] Cordina *Resistance to Third-Party Litigation Funding in Europe*, (n 48), 28.

improvement of consumers' access to justice as one of the Directive's core aims.

However, the legal basis and underlying rationale of the Directive have been subject to academic debate. While the RAD is primarily grounded in Article 114 TFEU and supported by Article 38 of the Charter, reflecting its focus on consumer protection and internal market harmonisation, some scholars question whether provisions such as Article 81(2)(e) TFEU and Article 47 of the Charter, both more directly linked to access to justice, would have constituted a more appropriate foundation.[88]

Finally, Article 20 of the RAD reinforces the importance of funding by requiring Member States to take measures ensuring that qualified entities are not prevented from bringing representative actions due to the costs of proceedings. This provision implicitly acknowledges that, without adequate financial support, the effectiveness of the collective redress mechanism would be significantly undermined.

The debate on TPLF as a tool for enhancing access to justice intensified following the EP Resolution. The Resolution emphasises the importance of Article 47 of the Charter as a key legal basis for ensuring effective judicial protection, highlighting the role that properly regulated TPLF can play in facilitating access to justice.[89] It suggests that, particularly in jurisdictions with high litigation costs, TPLF could be more widely used if adequate safeguards are in place.

At the same time, the Resolution acknowledges the existence of alternative support mechanisms, such as public funding, legal aid, and alternative dispute resolution. However, it underlines that TPLF offers a distinct advantage by enabling claimants to pursue direct compensation through litigation. Given its established use in jurisdictions such as Australia, the United States, Canada, the United Kingdom, and the Netherlands, TPLF is increasingly viewed as an important instrument for making access to justice more effective in practice.[90]

Overall, both legal and economic perspectives support the view that TPLF functions as an important tool for enhancing access to justice. It enables claimants who lack sufficient financial resources to pursue claims that would otherwise remain unaddressed, while also offering economically stronger parties a means of managing litigation risk and costs more efficiently.[91] In this sense, TPLF expands the practical possibility of bringing or defending

[88] Hess (n 82), 85-96.
[89] EP Resolution (n 64), paras A, C.
[90] EP Resolution (n 64), para I.
[91] Gian Marco Solas, 'Social Impact of Third-Party Funding' in *Third Party Funding: Law, Economics and Policy* (Cambridge University Press 2019), 230.

claims and aligns with the broader objective of ensuring effective judicial protection. As such, its growing presence reflects not only market dynamics but also its perceived value in supporting a fundamental principle of modern legal systems, access to justice.

3.2 TPLF and Commercialisation of Justice

3.2.1 Conceptualizing the Commercialisation of Justice

One of the most frequently raised concerns in the debate on TPLF is the so-called “commercialisation” or “commodification” of justice. In this context, both terms are often used interchangeably to describe a shift in which legal claims are treated as economic assets and dispute resolution becomes a means of generating profit.[92] In other words, justice risks being framed not only as a fundamental right, but also as something that can be traded, financed, and monetised.

This concern goes beyond specific issues such as conflict of interest, funders’ influence over procedural decisions, or the share of damages they receive. At its core, the critique is more fundamental: it questions whether the very involvement of profit-driven actors in litigation already transforms the nature of justice itself. If claims can be brought, funded, and strategically pursued for financial return, does this not risk turning the justice system into a marketplace?

While legislative efforts, including at the EU level, have attempted to address these risks by introducing safeguards, such as rules on conflict of interest or limits on funders’ influence,[93] the broader question remains unresolved. Is it possible to regulate TPLF in a way that preserves its benefits without fundamentally altering the nature of justice? Or does its very existence already signal a shift towards a more market-oriented model of dispute resolution?

3.2.2 Historical and Doctrinal Background of the Commercialisation of Justice in the TPLF Context

The concern that TPLF may lead to the commercialisation of justice has its roots in common law traditions, particularly in the doctrines of maintenance and champerty.[94] Maintenance refers to the involvement of a third party in supporting litigation, while champerty goes further by allowing such support in exchange for a share of the proceeds.[95] Both practices were historically

[92] *Ibid,* 246.
[93] RAD (n 1) Recitals 25, 52; Articles 4(3)(e), and 10(1).
[94] Cordina *Is It All That Fishy?* (n 85), 274.
[95] Keith N Hylton, *The Economics of Third-Party Financed Litigation* (Boston University School of Law, Law and Economics Research Paper No 11-57, 2011), 701.

prohibited, especially in England, on the basis that they risk turning litigation into a profit-driven activity and undermining the integrity of the justice system.[96] Although these restrictions have since been relaxed in jurisdictions such as the United Kingdom, the underlying concern remains influential. For instance, Ireland continues to restrict TPLF partly to avoid the commodification of legal claims.[97] This reflects a broader, long-standing view that legal disputes should not be reduced to tradable financial assets, as justice encompasses not only economic interests but also fundamental societal values. At the same time, early critics argued that prohibiting third-party support could prevent legitimate claims from being pursued, a tension that continues to shape the modern debate on TPLF.[98]

Beyond these doctrinal origins, the debate reflects deeper philosophical and structural differences between legal systems. In many civil law jurisdictions, legal claims are traditionally understood through a corrective justice lens, where the purpose of litigation is to restore the victim and hold the wrongdoer accountable. Within this framework, a claim is seen as a personal right that should remain under the control of the injured party, rather than being treated as a transferable economic asset. As a result, the idea of allowing third-party investors to finance and profit from litigation is often viewed with scepticism, as it may dilute the moral and restorative function of the justice system.[99]

There has been "anti-commodification of justice" argument as well, that is grounded in a non-consequentialist view that considers it inherently undesirable for private actors to profit from others' legal claims. It opposes the transformation of civil justice into a market commodity, arguing that reducing legal disputes to monetary value undermines their broader moral and societal significance. However, this position faces challenges, as it must justify why civil justice should be exempt from commodification, particularly given that legal systems already assign financial value to harm and compensation.[100]

Building on these doctrinal and philosophical concerns, the contemporary use of TPLF raises a number of concrete normative issues in practice. There are growing concerns about the role of TPLF in the justice system and what it brings to it. One of the key concerns related to its commercial nature is that claims may be selected based on profitability rather than merit, leading the justice system to increasingly resemble a marketplace for disputes.

It is often identified in the doctrine as a negative social effect; in fact, it is a consequence of the commercialisation of the justice system. Since funders are

[96] Cordina *Resistance to Third-Party Litigation Funding in Europe*, (n 48), 93.
[97] Mapping (n 57), 279
[98] Cordina *Resistance to Third-Party Litigation Funding in Europe*, (n 48), 93.
[99] Solas (n 91), 245-246.
[100] Cordina *Is It All That Fishy?* (n 85), 274.

primarily interested in financing profitable claims, they are unlikely to support cases with little or no commercial value, which may limit its contribution to access to justice.[101] Furthermore, in Europe, TPLF is primarily available for high-value commercial disputes, thereby excluding lower-value claims.[102] In addition, certain more risky or commercially less attractive claims may remain unfunded. TPLF also raises significant ethical concerns, alongside it is commodifying the justice, including the real risk of conflict of interest between the commercial incentives of funders, the professional obligations of lawyers, and the rights and expectations of clients.

These concerns become particularly visible in collective redress proceedings, where the remuneration of funders is often linked to the compensation ultimately awarded to the claimant group. In such cases, the funder's return is derived directly from damages intended to compensate injured parties. This raise concerns that collective claims may become financially exploited and that claimants may ultimately be undercompensated. For this reason, discussions surrounding the introduction of price caps on funders' remuneration have become increasingly important within the EU debate on TPLF regulation.

3.3 Structural Tension in EU Collective Redress

TPLF plays an important role in making collective redress mechanisms effective. At the same time, its increasing use introduces market dynamics into litigation, thereby creating a fundamental tension: while it facilitates access to justice, it also contributes to the commercialisation of dispute resolution.

This tension is not merely technical, but rather conceptual and structural in nature. It reflects a deeper conflict between competing values within the legal system: on the one hand, the need to ensure effective judicial protection, and on the other, the desire to preserve the integrity and non-commercial character of justice. As a result, it is difficult for the legislator to fully resolve or balance these competing objectives. The RAD acknowledges this tension by emphasising the need to both improve access to justice and prevent abusive litigation.[103] However, its regulatory response remains limited, focusing primarily on issues such as conflict of interest and transparency, rather than addressing the broader implications of the commercialisation of justice.

From a doctrinal perspective, it has been argued that TPLF does not necessarily enhance access to justice but may instead lead to inequalities in

[101] Solas (n 91), 231.
[102] Cordina *Is It All That Fishy?* (n 85), 271.
[103] RAD (n 1), Recital 10.

access.[104] Even within typical categories of funded cases, access to funding is inherently selective, as it depends on the funder's assessment of risk, expected return, and strategic considerations. Consequently, claimants with similar legal claims may face different opportunities to pursue them, depending not on legal merit alone, but on their commercial attractiveness. In this sense, access to justice becomes uneven by design: some legally well-founded claims may fail to secure funding, while others with stronger financial prospects may be prioritised. This raises the question of whether such a system can truly be regarded as providing equal access to justice.

From this perspective, the use of market-based criteria in allocating funding may be difficult to reconcile with the principle of effective judicial protection enshrined in Article 47 Charter. If access to litigation is conditioned by profitability and risk assessment, rather than solely by the existence of a legal claim, it becomes questionable whether the right to a judicial remedy or access to justice is equally guaranteed in practice through TPLF.

Despite these concerns, the current EU legislative framework does not fully engage with this structural tension. While the RAD seeks to strike a balance between enhancing access to justice and preventing abusive litigation, it does so in a relatively narrow manner. Earlier initiatives, such as the Recommendation 2013/396/EU, contained more explicit attempts to address the risks associated with the commercialisation of litigation. However, the final legislative approach adopted in the RAD remains cautious and limited, leaving the broader tension between access to justice and commercialisation largely unresolved.

[104] Alan Uzelac *Third-Party Litigation Funding as a Vehicle for Access to Justice* in Xandra Ellen Kramer, Masood Ahmed, Adriani Dori and María Carlota Ucín (eds), *Sustaining Access to Justice: New Avenues for Costs and Funding* (Hart/Bloomsbury 2025), 30.

4 Regulatory Responses and National Approaches

This chapter will examine how the relationship between access to justice and the conflicts arising from TPLF is addressed at the EU level. As mentioned earlier, EU regulation of TPLF has primarily focused on safeguards related to conflict of interest and transparency. However, the issue of the commercialisation of justice, although widely discussed in doctrine, appears to receive less attention from the legislator.

In this context, it is first necessary to analyse the safeguards against conflict of interest and economic interest of funders and the transparency requirement in order to better understand the intentions of the legislator. While there is no direct reference to the commercialisation of justice in the case law of the CJEU, the independence of legal practitioners has been a relevant concern in its jurisprudence and will be examined in detail.

Following this, the chapter will address the "price cap" issue and examine how funders' remuneration is treated under EU law. This will help to assess to what extent EU regulation engages with the economic aspects of TPLF and the broader concern of commercialising justice.

Finally, the chapter will turn to national approaches to this tension. It will explore how TPLF is regulated at the national level and what kinds of gaps or differences arise. This will ultimately contribute to answering the broader question under EU law as to whether there is a need for further harmonisation in the field of TPLF.

4.1 EU Responses to the Risks of TPLF

4.1.1 Balancing Access to Justice and Procedural Integrity in EU Law

As the RAD is the main legislative act regulating TPLF at the EU level, it is clear from its wording and objectives that it seeks to strike a balance between improving access to justice and addressing the risks arising from third-party funding. As stated in Recital 10 of the Directive, "It is important to ensure the necessary balance between improving consumers' access to justice and providing appropriate safeguards for traders to avoid abusive litigation that would unjustifiably hinder the ability of businesses to operate in the internal market…".

To achieve this balance, the Directive introduces safeguards aimed at preventing the misuse of representative actions, particularly through rules governing the designation and funding of qualified entities. At the same time, compared to more traditional forms of litigation financing, such as hourly fee arrangements, TPLF is often considered to pose a higher risk of conflict of interest and economic influence. This is largely due to the role of funders in selecting cases with a higher likelihood of financial return, monitoring litigation costs, and contributing strategic and financial expertise throughout the proceedings.[105] While these features may enhance the efficiency and viability of claims, they also raise concerns regarding the potential influence of funders on the conduct of litigation.

Against this background, EU law seeks to manage these risks primarily through safeguards relating to conflict of interest, the independence of qualified entities, and transparency requirements.

i. Conflict of Interest

Article 10 of the RAD sets out specific rules applicable where representative actions are funded by a third party. It requires Member States to adapt their national laws to prevent a conflict of interest and to ensure that the economic interests of funders do not divert representative actions from serving the collective interests of consumers.

Conflict of interest represent one of the central concerns in relation to TPLF, as the involvement of a third-party funder creates a significant risk of diverging interests between the funder, the claimant, and the legal representatives. In the context of EU collective redress, the RAD addresses this risk by prohibiting situations where funding could compromise the neutrality of the proceedings. For example, representative actions must not be brought against a defendant who is a competitor of the funder or on whom the funder is economically dependent.[106] In addition, the Directive requires that the source of funding be disclosed to the court or relevant administrative authority by the qualified entity representing the claimants.

Prior to the adoption of the RAD, similar concerns had already been reflected in the Recommendation 2013/396/EU, often regarded as a precursor to the current framework. In particular, paragraph 16 emphasised the need to limit the influence of funders by requiring Member States to ensure that third parties are not permitted to interfere with key procedural decisions, such as settlements, and are prevented from financing actions where conflict of interest may arise, including cases involving competitors or economically linked parties.

ii. Transparency as a Tool to Control Conflict

To address the risks of conflict of interest, both EU and national legislators have developed transparency requirements in the context of TPLF. Courts

[105] Cordina *Resistance to Third-Party Litigation Funding in Europe*, (n 48), 172.
[106] Cordina *Is It All That Fishy?* (n 85), 275.

may require the disclosure of funding arrangements between funders and claimants, as reflected in Recital 52 of the RAD. Under this framework, qualified entities are expected to disclose the sources of their funding, both in general and in relation to specific representative actions. This obligation enables courts or administrative authorities to assess whether third-party funding gives rise to conflict of interest or creates a risk of undue influence over procedural decisions, including settlements. Transparency therefore operates as a preventive safeguard, ensuring that litigation remains focused on the protection of consumers' collective interests rather than being driven by the economic objectives of funders. In this sense, it does not prohibit TPLF but rather seeks to make it visible and subject to judicial oversight, thereby preserving the integrity of the proceedings.

A similar approach can be found in the Recommendation 2013/396/EU, although it formulates the requirement in more general terms and does not clearly specify the situations in which disclosure must take place. The use of the term "should" nevertheless indicates an intention to establish a mandatory disclosure obligation at the national level, requiring Member States to ensure that the claimant party declares the source of its funding at the outset of proceedings.[107] Paragraph 14 introduces this general transparency obligation, while paragraph 15 complements it by empowering courts to intervene where third-party funding creates risks for the fairness and integrity of the proceedings. In particular, courts may take action where there is a conflict of interest between the funder and the claimant, where the funder lacks sufficient financial resources to meet its commitments, or where the claimant is unable to cover potential adverse costs.

In practice, there is an increasing tendency to disclose funding arrangements before courts, particularly at early procedural stages such as the certification or admissibility phase of collective actions, as observed in jurisdictions like England and Wales and the Netherlands.[108]

iii. Economic Interest and Independence of Qualified Entities

Beyond formal conflict of interest, EU law also addresses the broader risk of economic influence over litigation. Article 4(3)(e) of the RAD requires that qualified entities act independently and are not influenced by the economic interests of third-party funders. This reflects a concern that financial involvement in litigation may affect not only specific procedural decisions, but also the overall direction and conduct of proceedings.

In practice, it is often argued that funders adopt a relatively passive role in litigation. For instance, industry standards such as those reflected in the regulatory framework in England and Wales emphasise that funders should

[107] Recommendation 2013/396/EU (n 15), para 14.
[108] Cordina *Resistance to Third-Party Litigation Funding in Europe*, (n 48), 178.

not interfere with the conduct of the case, leaving control over litigation strategy and procedural decisions to the claimant's legal representatives. While this suggests that the risk of direct interference may be limited, the extent to which funders remain truly passive continues to be subject to debate.[109]

The importance of safeguarding independence from economic influence is also reflected in the case law of the Court of Justice. In the *Halmer*[110] case, the Court examined German legislation which prohibited external investors from holding shares in law firms unless they were themselves practising lawyers. The case arose after a German law firm transferred 51% of its shares to an Austrian company that did not engage in legal practice, which was considered incompatible with national rules requiring that lawyers retain majority ownership and control. The Court held that such restrictions may be justified in order to protect the independence of lawyers and to prevent conflict of interest. In particular, in paragraphs 68-70, the Court emphasised that excluding purely financial investors from influencing the structure and decision-making of law firms serves the objective of ensuring the proper administration of justice and maintaining the integrity of the legal profession. It further noted that investors motivated solely by profit could exert pressure, even indirectly, on how a law firm operates. For example, they might push for cost reductions, prioritisation of more profitable cases, or changes in client selection in order to maximise returns. The Court considered that even the possibility of such threat is sufficient to raise concerns, as lawyers are required to act in accordance with professional and ethical obligations that go beyond purely economic considerations.[111]

More generally, within the EU legal framework, direct contractual relationships between funders and lawyers remain relatively uncommon. This is largely due to existing restrictions on non-lawyers holding ownership stakes in law firms, which aim to preserve professional independence.[112] However, the compatibility of such restrictions with EU law continues to be a subject of legal discussion.

4.1.2 Limits of EU Regulation: Commercialisation and Profit Concerns

Current EU legislation on TPLF leaves important aspects of the issue unregulated, particularly those that may contribute to the commercialisation and potential commodification of the justice system. The RAD does not address the profit-making dimension of third-party funding, instead leaving

[109] Cordina *Resistance to Third-Party Litigation Funding in Europe*, (n 48), 174.

[110] Case C-295/23 *Halmer Rechtsanwaltsgesellschaft UG v Rechtsanwaltskammer München* [2024] ECLI:EU:C:2024:1037.

[111] *Ibid*, paras 70 and 71.

[112] Dori and Kramer (n 55), 29.

this matter largely to the discretion of Member States and to private agreements between the parties.

In practice, funders are often allowed to base their remuneration on the amount of compensation awarded in redress proceedings. This raises particular concerns in the context of collective actions, where large groups of claimants seek compensation for harm suffered. The purpose of such compensation is to correspond, as far as possible, to the damage suffered by the claimants. However, where a portion of that compensation is allocated to funders under funding agreements, can the compensation still fully serve its intended restorative function for the injured party?

These concerns were already addressed in the Recommendation 2013/396/EU. In particular, paragraph 32 introduced an additional safeguard for compensatory collective redress, requiring Member States to prohibit arrangements in which the funder's remuneration is directly linked to the amount of compensation recovered, unless such arrangements are subject to public oversight. Similarly, paragraph 16(c) emphasised that funders should not charge excessive interest on the funds provided. Together, these provisions aimed to limit the extent to which financial incentives could distort the purpose of compensation and the conduct of litigation.

However, these safeguards were not incorporated into the RAD. As a result, the issue of funders' remuneration remains largely unregulated at the EU level. This omission can partly be explained by the importance of fundamental principles such as freedom of contract and the freedom to conduct a business, which allow parties to determine the terms of their agreements. Introducing strict limitations on remuneration may have been perceived as an excessive interference with these principles.[113]

The Commission's 2018 Report demonstrated that the regulation of funders' remuneration, particularly where it is linked to the compensation awarded, varies significantly across Member States and remains far from harmonised. This fragmentation reflects the absence of a common EU approach and confirms that Member States have adopted diverging positions, ranging from restrictive to more permissive regimes. At the same time, from a practical and market perspective, TPLF was still relatively underdeveloped in many Member States at the time, which may explain the reluctance to introduce strict regulatory constraints at the EU level. However, this combination of regulatory diversity and market development also reveals a structural risk within the EU framework. Even where certain Member States choose to impose stricter rules in line with the Recommendation 2013/396/EU, funders may avoid these limitations by operating from, or directing funding towards, jurisdictions with less restrictive or entirely unregulated frameworks. Given

[113] Cristina Poncibò and Gian Marco Solas, 'Third-Party Litigation Funding in the European Union: Regulatory Challenges' (2024) 25(2) *Theoretical Inquiries in Law*, 201.

the inherently cross-border nature of both litigation funding and collective redress mechanisms, such regulatory arbitrage enables fund providers to bypass national restrictions. As a consequence, uneven levels of protection persist across the Union, potentially weakening the effectiveness of stricter national regimes and creating incentives to shift litigation towards more favourable jurisdictions.[114]

Legislators may have preferred a "wait and see" approach, allowing the market to evolve before introducing strict regulatory constraints. This explains why, instead of adopting the Recommendation's stricter provisions on remuneration and cost control, the later Directive shifted focus towards transparency and conflict of interest safeguards**,** leaving economic aspects like pricing largely unregulated.

From a practical perspective, litigation funders in Europe typically receive between 20% and 30% of the damages awarded.[115] While some jurisdictions, such as Germany, have introduced specific limitations, capping funders' returns at 10% in certain collective redress actions, such approaches remain the exception rather than the rule, and have been criticised by funders as overly restrictive.[116]

More broadly, concerns about excessive returns have led to proposals for introducing caps at the EU level. For example, the proposed Directive suggested limiting funders' remuneration to 40% of the claimant's recovery, alongside additional safeguards such as restrictions on unilateral withdrawal from funding agreements and prioritising claimants in the distribution of compensation.[117] These measures were clearly aimed at strengthening claimant protection and addressing the imbalance of power between funders and funded parties.[118]

At the same time, it is important to recognise the counterargument. Where third-party funding represents the only realistic means of bringing a claim, receiving a reduced share of compensation may still be preferable to having no access to justice at all. From this perspective, even imperfect compensation is better than none, and overly strict caps on funders' returns could reduce the availability of funding and ultimately limit access to justice.[119]

4.1.3 Evaluation: A Partial and Reactive Framework

[114] Commission Report 2018 (n 18), 10.
[115] Cordina *Resistance to Third-Party Litigation Funding in Europe* (n 48), 178.
[116] CMS Report 2025 (n 28), 45.
[117] EP Resolution (n 64), Article 14(4), Recital 27.
[118] Poncibo and Solas (n 113), 202.
[119] Cordina *Resistance to Third-Party Litigation Funding in Europe* (n 48), 178.

The development of EU regulation on TPLF reflects an evolving and somewhat cautious approach towards balancing access to justice with the risks associated with the commercialisation of litigation. The Recommendation 2013/396/EU adopted a relatively restrictive position, particularly regarding funders' remuneration and economic influence over proceedings. It attempted to limit excessive commercial incentives by discouraging remuneration linked to compensation amounts and by introducing safeguards against conflict of interest and funder control. However, many of these provisions were not incorporated into the RAD.

Instead, the RAD adopted a more limited and procedural approach. Rather than regulating the economic structure of TPLF directly, it focuses primarily on transparency obligations, conflict of interest, and the independence of qualified entities. In this sense, the Directive does not seek to prevent the commercialisation of litigation itself, but rather to manage some of its procedural risks. Questions concerning funders' profits, pricing structures, and the broader commodification of justice were largely left to Member States and private contractual arrangements.

This demonstrates that the current EU framework remains partial and reactive rather than comprehensive. While the legislator recognises the importance of access to justice and the practical role of TPLF in collective redress, there is still no clear EU-wide position on how far commercial interests should be permitted to shape litigation. The later discussions reflected in the European Parliament Resolution further confirm this uncertainty, as they attempt to identify a middle ground between protecting claimants and preserving the economic viability of litigation funding. As a result, the absence of harmonised rules continues to produce divergent national approaches and varying levels of protection across the Union.

4.2 National Approaches to Litigation Funding

National systems reflect fundamentally different views on the function of litigation within society. While some jurisdictions remain highly sceptical towards the broad use of TPLF and are reluctant to regulate it within their national legal frameworks, others take a more permissive approach, recognising that the increasing costs of litigation make external funding almost unavoidable for consumer organisations and qualified entities, particularly in the field of collective redress, where such entities are generally required to operate on a non-profit basis.

Examining these different national approaches is important not only for understanding the underlying legal and philosophical concerns surrounding TPLF, but also for assessing whether greater harmonisation at the EU level may become necessary in the future development of litigation funding within the Union.

4.2.1 Restrictive Approaches to TPLF within the EU

According to Article 10 of the RAD, the regulation of TPLF is largely left to the discretion of the Member States. As a result, significant differences have emerged across the EU regarding the legality and regulation of litigation funding. However, practice demonstrates that restrictive approaches do not necessarily resolve the underlying concerns surrounding TPLF. Instead, divergent national rules may create procedural inconsistencies and difficulties in cross-border litigation, showing that the issue cannot simply be ignored but must be addressed in some form within the EU legal framework.

Among EU Member States, Ireland and Greece appear to adopt some of the most restrictive approaches towards TPLF. According to the EC Study on Mapping TPLF, both jurisdictions generally prohibit or significantly limit third-party litigation funding.[120] The reasons behind these restrictive approaches, however, differ in their legal and policy foundations.

i. TPLF in Ireland

In Ireland, the restrictive position is strongly linked to the common law doctrines of maintenance and champerty. Traditionally, supporting litigation in exchange for a share of the proceeds has been considered contrary to public policy and, in certain circumstances, as a criminal offence.[121] The leading case confirming this position is *Persona Digital Telephony Ltd v Minister for Public Enterprise*, where the Irish courts clarified the illegality of profit-driven third-party funding agreements.[122] The case concerned a collective action in which the claimants alleged unlawful interference in a public procurement process conducted by the government. In order to finance the proceedings, the claimants entered into a funding agreement with a professional third-party litigation funder. The respondent minister challenged the agreement, arguing that it constituted unlawful champerty and was therefore void. The Supreme Court confirmed that third-party funding arrangements entered into for profit fall within the prohibition of champerty and are therefore unlawful under Irish law.[123] The Court emphasised: "A person who assists another's proceedings without a *bona fide* independent interest acts unlawfully".[124]

Beyond the traditional doctrines of maintenance and champerty, the restrictive Irish approach is also closely connected to broader concerns

[120] Mapping (n 57), 241, 57; see also EPRS *European Added Value Assessment* (n 66), 47.

[121] *Persona Digital Telephony Ltd v Minister for Public Enterprise* [2017] IESC 27, para 9.

[122] *Ibid*, para 54.

[123] EPRS *European Added Value Assessment* (n 66), 47; *Persona Digital Telephony* (n 121) para 54 (iv).

[124] *Persona Digital Telephony* (n 121), para 54 (iii).

regarding the commodification of justice.[125] Irish case law demonstrates a continuing unease with the idea of treating litigation as a commercial investment opportunity rather than as a mechanism for resolving disputes and protecting rights. In *SPV Osus Ltd v HSBC Institutional Trust Services (Ireland) Ltd*,[126] O'Donnell J highlighted the public policy concerns arising from the commercialisation of legal claims. Although the case not concerned TPLF directly, similar concerns are relevant in the litigation funding context.[127] O'Donnell J notably observed that, even if litigation is not regarded as inherently undesirable, it is nevertheless "an activity which society should not encourage" from a commercial perspective.[128] Judge Clarke also mentions the tension that access to justice creates as: "solving the problem of access to justice runs the real risk of creating more problems than it solves".[129]

The restrictive Irish approach is also reflected in the work of the Irish Law Reform Commission, which has examined both the risks and potential benefits of TPLF in its Consultation Paper on the future development of litigation funding in Ireland. The Paper identifies several concerns frequently associated with legalising TPLF, including the risk of encouraging vexatious or unmeritorious litigation, reducing the level of compensation ultimately received by claimants, increasing legal costs and insurance premiums, and creating difficulties in certain sensitive categories of disputes.[130]

At the same time, the Consultation Paper also acknowledges that litigation funding may improve access to justice, strengthen equality of arms between parties with unequal financial resources, assist insolvency proceedings by increasing the pool of available assets, and address situations where corporate entities are already able to obtain indirect forms of litigation investment despite the formal prohibition on champerty.[131]

The Law Reform Commission emphasised that any future regulation of TPLF in Ireland should pursue two central objectives. First, it should minimise the financial and procedural risks that litigation funding may create both for funded parties and for opposing parties in disputes. Second, it should ensure that the development of TPLF does not undermine, but rather preserves, the proper and effective administration of justice within the Irish legal system.[132]

ii. TPLF in Greece

[125] Law Reform Commission, *Consultation Paper: Third-Party Litigation Funding* (LRC CP 69–2023), 46-47.

[126] *SPV Osus Ltd v HSBC Institutional Trust Services (Ireland) Ltd* [2018] IESC 44.

[127] Consultation Paper (n 125), 46.

[128] *Ibid* 47; Osus (n 126), para 93.

[129] Osus (n 126), point 2.2.

[130] Consultation Paper (n 125), 49-50.

[131] *Ibid* 62.

[132] *Ibid* 90.

Turning to the situation in Greece, there is currently no existing or planned legislation specifically regulating the TPLF, and there are no known professional litigation funders operating within the country. In addition, TPLF is not permitted in representative actions in Greece.[133]

The debate surrounding TPLF in Greece has remained largely theoretical. Concerns raised against its introduction mainly relate to the potential commercialisation of legal claims and the fear that third-party funding could undermine the principle of equality between parties in civil proceedings by giving one side an undue financial advantage.[134] These concerns reflect a broader scepticism towards the increasing involvement of commercial actors in the justice system.

At the same time, some stakeholders have expressed positive views regarding the possible regulation of TPLF, particularly in the context of collective and mass claims where litigation costs can be especially high. From this perspective, TPLF is seen as a potentially useful mechanism for improving access to justice. Although alternative mechanisms such as legal aid, public funding, and legal expenses insurance have been mentioned as possible solutions to litigation costs, consumer organisations have pointed out that these options are often limited or inaccessible in practice.[135] As a result, it has been argued that there may still be a practical need for TPLF within the Greek legal system.

4.2.2 Permissive and Regulated Approaches to TPLF within the EU

Examining the approaches adopted by different EU Member States is important for understanding both the current level of regulation of TPLF and the different ways legislators attempt to address its risks and regulatory gaps. Although the underlying dilemma remains largely the same across jurisdictions, namely, how to balance access to justice with concerns regarding commercialisation and funder influence, the solutions adopted at national level differ significantly. The following section therefore examines selected national models, including Germany and the Netherlands, in order to analyse how more permissive jurisdictions seek to reconcile the benefits of litigation funding with the need to preserve procedural fairness and the integrity of the justice system.

i. TPLF in Germany

Although TPLF is permitted in Germany, there is no comprehensive legal framework governing it. Instead, the issue is addressed through different

[133] Mapping (n 57), 692.
[134] *Ibid* 241-242, 244.
[135] *Ibid* 243.

legislative acts, including the Unfair Commercial Practices Act (*Gesetz gegen unlauteren Wettbewerb; UWG*) and the Act on the Enforcement of Consumer Rights (*Verbraucherrechtedurchsetzungsgesetz; VDuG*).[136]

Germany adopts a relatively cautious approach towards TPLF, attempting to balance the permissibility of funding agreements with concerns related to procedural fairness and the commercialisation of litigation, while still respecting the principles of freedom to conduct a business and contractual freedom. In particular, the VDuG introduced specific rules on third-party funding in § 4 para. 2 no. 3, according to which the share promised to the funder may not exceed 10% of the proceeds obtained through the redress action.[137] Germany is currently the only EU jurisdiction that imposes such a strict statutory cap on funders' remuneration in collective redress proceedings.

This limitation has been criticised by litigation funders as being overly restrictive and potentially incompatible with the freedom to conduct a business. At the same time, however, the German approach seeks to strike a balance between facilitating access to justice through external funding and protecting collective proceedings from potentially exploitative commercial practices.[138]

Germany only has specific procedural safeguards for TPLF in two particular types of proceedings:

1. Redress actions under the VDuG - the funding agreement must be disclosed to the court.

2. Skimming-off procedures under § 10 UWG - the consumer organisation using TPLF must first obtain approval of the funding agreement from the *Bundesamt für Justiz* (Federal Office of Justice).[139]

In this way, German law attempts to combine access to justice considerations with procedural transparency and control over third-party funding arrangements. The German approach reflects an attempt to institutionalise TPLF under a controlled procedural framework, rather than leaving the matter entirely to market practices.

ii. TPLF in the Netherlands

The Netherlands is considered one of the most permissive jurisdictions towards TPLF within the EU. It was also among the first Member States to transpose the RAD into national legislation. TPLF is widely permitted and

[136] Mapping (n 57), 224.
[137] *Ibid* 57, 225; CMS Report 2025 (n 28), 45.
[138] CMS Report 2025 (n 28), 45.
[139] Mapping (n 57), 224-225, 228.

frequently used both in ordinary litigation and in collective redress proceedings. One of the main reasons for the development of the funding market in the Netherlands is the high cost of litigation, which has increased the importance of external funding as a tool for facilitating access to justice.[140] According to both the Study on Mapping and the ERSP Report, the Netherlands has one of the largest and most active litigation funding markets in Europe, excluding the United Kingdom.[141]

For strengthening the framework for collective redress, the Netherlands adopted the Mass Damage Settlement in Collective Action Act (*Wet afwikkeling massaschade in collectieve actie – WAMCA*), which entered into force on 1 January 2020. The WAMCA introduced the possibility for representative organisations, such as foundations and associations, to bring collective damages claims on an opt-out basis.[142] The reform aimed to improve the efficiency and effectiveness of collective redress mechanisms, while balancing the interests of injured individuals with the rights of defendants. In this respect, the Dutch approach reflects a generally open attitude towards collective litigation and the use of TPLF as a mechanism supporting large-scale claims.

At the same time, Dutch law introduced safeguards intended to prevent conflict of interest and excessive funder influence. Representative organisations are required to possess sufficient financial resources to pursue claims, and they may rely on third-party funders for that purpose. However, funders are not permitted to sit on the board of the representative organisation, nor may individuals with a direct financial interest in the outcome of the proceedings exercise control within the organisation. In addition, courts may review funding arrangements in order to assess whether the interests of claimants are adversely affected by the involvement of the funder.[143] Where a representative action is financed through TPLF, the existence of such funding and the general structure of the funding arrangement must be disclosed publicly. The funder must also be financially reliable and may not influence litigation strategy or procedural decisions in a manner that creates conflict of interest.[144]

Overall, the Dutch approach demonstrates an attempt to accommodate the practical benefits of TPLF for access to justice, while simultaneously introducing transparency and independence safeguards to preserve the integrity of collective proceedings. Nevertheless, the broad acceptance of TPLF within the Dutch system has also intensified concerns regarding the

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[140] Poncibo and Solas (n 113), 197.

[141] Kramer and Tillema (n 7), 175; EPRS *European Added Value Assessment* (n 66), 8; Mapping (n 57), 266.

[142] Mapping (n 57), 358.

[143] *Ibid* 364.

[144] Kramer and Tillema (n 7), 179.

increasing marketisation of collective litigation and the growing influence of commercial funders in mass claims.

4.2.3 TPLF Beyond the EU: The United States Model

The US model demonstrates a significantly higher tolerance towards the commercialisation of litigation compared to many EU jurisdictions. Rather than restricting TPLF itself, the US approach focuses primarily on managing ethical and procedural risks on a case-by-case basis.

As a common law jurisdiction, the United States does not have a centralised federal framework regulating TPLF. Instead, regulation largely develops through case law, state legislation, and judicial practice. The approach therefore differs considerably between states depending on their legal traditions and policy preferences. In general, TPLF agreements are treated as contractual arrangements, meaning that principles of contract law play a major role in shaping litigation funding relationships. At the same time 12 states, as well as the US Congress, have introduced or discussed specific regulatory measures concerning litigation funding.[145]

Although the traditional common law doctrines of champerty and maintenance also originated in the United States, American jurisdictions have generally adopted a more permissive attitude towards litigation funding than countries such as Ireland. In many states, these doctrines have either been abolished, significantly narrowed, or are rarely enforced in practice. As a result, TPLF is widely used, particularly in large-scale litigation and class actions.[146]

Transparency and disclosure have become particularly important aspects of the American debate. Some states, including Wisconsin, Montana, and West Virginia, have introduced rules requiring disclosure of litigation funding arrangements.[147] Other approaches impose disclosure obligations only in specific categories of proceedings. For example, legislative proposals at the federal level have sought to require disclosure of funding agreements in class actions and multidistrict litigation. Similarly, Indiana law requires disclosure where litigation funding is directly or indirectly financed by a foreign entity.[148]

More recently, political discussions in the United States have increasingly focused on the risk that foreign governments or foreign-controlled investors could use litigation funding strategically to influence domestic policy outcomes or gain economic advantages through civil litigation. Particular

[145] Mapping (n 57), 600.
[146] *Ibid,* 602.
[147] *Ibid,* 605.
[148] *Ibid.*

concerns have been raised regarding investments connected to countries viewed as political or economic rivals, such as China.[149] In response, some proposals have suggested restricting or prohibiting the participation of entities linked to foreign adversary states in litigation funding arrangements.[150] This reflects a different regulatory perspective from that found within the EU framework, where discussions surrounding TPLF have focused primarily on access to justice, conflict of interest, and procedural fairness, rather than on questions of foreign influence or national security.

Compared to the EU approach, the United States therefore appears less concerned with the commercialisation of litigation itself and more focused on transparency, ethical safeguards, and national security concerns. While EU discussions mainly concentrate on balancing access to justice with procedural integrity and preventing excessive economic influence, the US debate demonstrates a stronger acceptance of litigation funding as part of the broader litigation market.

4.3 Comparative Evaluation and the Need for Harmonisation

The comparison of national approaches demonstrates that there is currently no common understanding within the EU regarding the appropriate role and limits of TPLF in collective litigation. While restrictive jurisdictions such as Ireland and Greece prioritise concerns relating to the commodification of justice, procedural integrity, and public policy, more permissive systems such as Germany and the Netherlands place greater emphasis on the practical importance of TPLF for ensuring effective access to justice in complex and costly collective proceedings. However, even permissive jurisdictions attempt to introduce safeguards aimed at limiting excessive funder influence through transparency obligations, disclosure requirements, and restrictions designed to preserve the independence of representative organisations.

The comparison also reveals that the tension between access to justice and the commercialisation of litigation remains unresolved across jurisdictions. Different legal systems balance these interests in different ways depending on their procedural traditions, views on litigation, and broader policy considerations. At the same time, the absence of harmonised regulation creates fragmentation within the EU framework and may encourage parties and funders to favour jurisdictions with more attractive or less restrictive rules in collective actions.

The future development of TPLF within the EU therefore remains uncertain. The recent EC Study on Mapping TPLF illustrates the growing importance of

[149] Mapping (n 57), 605.
[150] *Ibid,* 606.

the issue at EU level and reflects the different views regarding the need for harmonisation. The study identifies three possible approaches to regulation: no regulation, light-touch regulation, and strong regulation.[151] Stakeholders supporting the absence of specific regulation argued that existing rules of contract law, civil procedure, and judicial oversight are already sufficient, and that excessive regulation could reduce the availability of funding and ultimately limit access to justice. By contrast, supporters of stronger regulation emphasised concerns relating to conflict of interest, excessive funder influence, commercialisation of litigation, and the reduction of claimants' compensation. Between these two positions, many stakeholders favoured a more balanced or "light-touch" approach aimed at ensuring transparency, basic safeguards, and legal certainty without making TPLF economically unviable.[152]

Although several risks associated with TPLF are already addressed through the RAD and national legislation, the lack of a more coherent framework may still create inconsistencies and uneven levels of protection across the EU. At the same time, the current stage of development of the TPLF market does not yet seem to justify strict and comprehensive EU-wide regulation. As reflected in the Study on Mapping, stakeholders frequently pointed out that there is still limited evidence showing that TPLF has systematically distorted competition or resulted in widespread abusive litigation within the EU.[153] For this reason, a more cautious approach based on monitoring the market, strengthening transparency, and introducing minimum safeguards may be more appropriate at the current stage of development. At the national level, Member States could still adopt more detailed rules where necessary in order to address specific procedural or ethical concerns within their own legal systems.

Overall, these developments suggest that the future of TPLF in the EU is unlikely to remain entirely unregulated. However, rather than pursuing full harmonisation, the more realistic approach may be the gradual development of minimum common standards aimed at ensuring procedural fairness, transparency, and effective access to justice across the Union.

[151] Mapping (n 57), 692.
[152] *Ibid,* 693-695.
[153] *Ibid,* 693.

5 Conclusion

This thesis examined the growing role of third-party litigation funding within the EU collective redress framework and the tension it creates between access to justice and the commercialisation of litigation. The analysis demonstrated that TPLF has become increasingly important in practice because collective proceedings are expensive and financially risky, while qualified entities operating on a non-profit basis often lack sufficient resources to pursue large-scale claims effectively. It led us to acknowledge that TPLF can play a significant role in strengthening practical access to justice. Particularly in collective proceedings, external funding may be the only realistic way for qualified entities and consumer organisations to bring complex claims before courts. In this sense, TPLF contributes to making collective redress mechanisms more effective in practice.

At the same time, the thesis also demonstrated that the concerns surrounding the commercialisation of justice cannot be entirely ignored. The involvement of commercial funders inevitably introduces economic interests into litigation. However, the analysis suggests that the "commercialisation of justice" often remains a broad and somewhat theoretical concern rather than a clearly established practical reality within the current EU framework. The existence of TPLF itself already reflects a certain level of market involvement in litigation. The more important issue is therefore not whether commercial elements exist, but how they can be regulated in order to prevent abusive control over litigation and preserve procedural fairness.

The evaluation of EU law and national approaches revealed that the most common safeguards against these risks include transparency requirements, the prevention of a conflict of interest, and the protection of the independence of lawyers and qualified entities. These safeguards are reflected both in the RAD and in several national legal systems. Nevertheless, the thesis also showed that the current regulatory framework remains fragmented and incomplete. While some Member States regulate TPLF in detail, others largely leave the matter to contractual freedom between the parties, creating inconsistencies within the EU legal landscape and increasing the risk of future abusive practices.

Particular attention was given to the issue of funders' remuneration. Unlike transparency and conflicts of interest, limitations on funders' profits remain largely unregulated at the EU level. Germany currently represents one of the few jurisdictions that has introduced a statutory cap on funders' remuneration in collective redress proceedings, although this approach has also been criticised as potentially too restrictive. Nevertheless, this thesis argues that some form of proportionate limitation on funders' remuneration may represent one of the most practical ways of preventing excessive commercialisation of collective litigation while still preserving the availability of funding.

Overall, the thesis concludes that the relationship between access to justice and the commercialisation of justice should not be understood as requiring one value to fully prevail over the other. The tension created by TPLF appears unavoidable within modern collective litigation. As a result, the most realistic solution is not the complete prohibition of TPLF, nor entirely unrestricted market freedom, but rather the development of balanced safeguards capable of allowing both interests to co-exist.

In this regard, a more coherent EU approach based on minimum common standards concerning transparency, independence, conflicts of interest, and reasonable control over funders' remuneration may become increasingly necessary as the TPLF market continues to develop within the Union. At the same time, full harmonisation does not yet appear entirely realistic considering the significant differences between Member States' legal traditions and levels of market development. Therefore, the role of the EU may currently be more effective through gradual guidance and support, particularly by adopting recommendations, reports, and other soft-law instruments aimed at assisting Member States with less developed or more restrictive approaches towards TPLF. Such measures could contribute to creating a more balanced and coherent framework while still respecting national procedural autonomy and preserving both effective access to justice and procedural integrity.

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