



## JOINT STATEMENT ON

# Responsible Private Funding of Litigation

June 2022

Our organizations, Airlines for Europe (A4E), AmCham EU, BUSINESSEUROPE, DIGITALEUROPE, DOT Europe, EFPIA, Eurochambres, EuroCommerce, European Banking Federation, European Justice Forum (EJF), InsuranceEurope, MedTech Europe and U.S. Chamber Institute for Legal Reform, support fair and balanced civil justice systems with effective enforcement of claimants' rights. The EU should work to promote access to justice while at the same time protecting all parties from opportunistic litigation, increasingly fuelled by third party litigation funding (TPLF).

TPLF allows private financiers, like investment and hedge funds, to sign confidential deals with lawyers or qualified entities to fund lawsuits and arbitration in exchange for a cut of any settlement or judgment/award. TPLF is an estimated €40 to €80 billion market globally. There are more than 100 litigation funders operating in Europe, yet TPLF is largely unregulated in the EU, unlike other financial and legal commercial activities. Private TPLF is not meant to be a public service, and funders can in fact decline to back cases, even meritorious ones, if they do not offer a sufficient financial return.

The introduction of a profit-motivated third party into the traditional attorney-client relationship presents a host of ethical issues and other public policy considerations. Funders may prioritize their bottom-line interests over the interests of the claimants and can unduly influence the decisions in a case. Funders can also arrange to be paid first and take a disproportionate share of any award, leaving claimants who suffered harm with little or no redress.

With no obligation to see cases through to the end and no responsibility for adverse costs, funders can pursue opportunistic claims for a high reward with low risk. Faced with years of litigation, expensive legal bills, and reputational risk, defendants may be forced to settle even unmeritorious claims.

Although Directive (EU) 2020/1828 on representative actions provided for some rudimentary rules around transparency of funders, these rules will only apply to collective actions brought under this one Directive, and not to any other type of claim or law outside the Directive's scope, including, in particular, those brought via the claims assignment models being operated in various EU Member States.

Furthermore, the Directive does not and could not provide, to the required extent, important safeguards, such as licensing of funders, oversight of funding agreements, and accountability for adverse costs.

Access to justice would not be impaired by imposing clear rules to mitigate the risks posed by TPLF investments. European policymakers should not delay addressing this growing financial industry. The European Parliamentary Research Service reports that the TPLF industry grew by 40% in the EU between 2009 and 2019, and is projected to grow even faster this decade, potentially doubling in size over the next five years.

We are therefore supportive of the European Parliament's legislative own-initiative report on responsible private funding of litigation, which calls on the European Commission to propose sensible safeguards for effective oversight of TPLF in all areas of law and types of litigation.

It is important for the investment climate in Europe that the EU supports justice systems that are effective, build trust, and dissuade a culture of litigation. These are essential ingredients for the 'Justice for Growth' strategy embraced by the Commission.

\*\*\*