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*Special Issue — Harmonizing and Enhancing the Enforcement of Consumer Law: A
Comparative Analysis of Germany and Italy*

COMPARATIVE LAW REVIEW

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FINANCING OF COLLECTIVE REDRESS PROCEEDINGS - A MAJOR CHALLENGE FOR QUALIFIED ENTITIES

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The article highlights the difficulties of qualified entities to finance collective redress proceedings. It explains that against the background of very limited budgets consumer organisations need access to third-party funding (TPF) in order to take redress actions to court. TPF is, however, a very controversial issue and most Member States have no clear rules on it. The article demonstrates that German law, in particular, has put severe restrictions on TPF for representative actions and it analyses the European Parliament's proposal for a Directive on TPF.

Key words: third-party funding – access to justice – assignment model – funder's success fee – representative actions

I. IT'S ALWAYS ABOUT MONEY ...

I.1 The cost problem with representative actions

After lengthy political wrangling, the Representative Actions Directive 2020/1828¹ (RAD) has entered into force and with considerable delay in some Member States the Directive has been implemented finally across the European Union. For Member States that previously had no comparable procedural instruments, this is good news for consumers. However, the Directive leaves broad scope for implementation, which has been used in different ways by the various states. Truly effective and comprehensive enforcement of consumer claims in cases of mass damage is therefore by no means guaranteed. The options for the institutions authorized to bring legal action vary greatly. One of the most important factors is financing.² As long as those who are entitled to

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

² For a general analysis of the funding problem in Europe see M. Tull/L. Visscher, *New Trends in Financing Civil Litigation in Europe, A Legal, Empirical and Economic Analysis*, Cheltenham 2010; G. Solas, *Third Party Funding*, Cambridge, 2019; B. Hess, Europäische Perspektiven der Prozessfinanzierung, in: A. Fremuth-Wolf (ed.), *Prozessfinanzierung in Österreich*, Vienna 2025, pp. 201-218; W. Hau, Private Funding, in B. Hess/M. Woo/L. Cadet/S. Menétrey/E. Vallines García (eds.), *Comparative Procedural Law and Justice*, Part III Chapter 7, Access to Justice and Costs of Litigation (2024), available at www.cplj.org/publications/3-7-private-funding (last visited 18 February 2026); T. Domej, Effektive Rechtsdurchsetzung, Zugang zur Justiz, Prozessfinanzierung, Legal Tech – Welcher Rechtsrahmen empfiehlt sich? Deutscher Juristentag (ed), *Verhandlungen des 74. Deutschen Juristentages*, Munich 2024, vol 1, part A; C. Poncibò/E. D'Alessandro, State of play of the EU private litigation funding landscape and the current EU rules applicable to private funding, in: European Parliamentary Research Service (eds.), *Responsible private funding of litigation - European added value assessment*, 2021, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662612/EPRS_STU\(2021\)662612_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662612/EPRS_STU(2021)662612_EN.pdf) (last visited 18 February 2026).

bring a representative action do not have sufficient financial resources, there is no guarantee that all or at least the most serious cases will be taken up.

Collective redress litigation is expensive as the aggregation of individual claims very often results in large amounts in controversy. In many Member States, court fees and lawyers's fees depend on the amount in controversy and the higher the aggregated amount of damages is, the more expensive litigation becomes. As very often the loser-pays principle applies, qualified entities which bring a collective action take a high procedural risk. Reimbursement of the opponent's costs is an important aspect. Even where qualified entities have access to legal aid provided by the state, this often only covers their own costs, but not adverse cost orders.³ However, it is often not just a question of the legal costs for the court proceedings themselves. Even before filing an action in the interest of consumers the preparation of a representative redress action can be complex and expensive.

The European legislator decided to give legal standing for representative actions under the Directive primarily to consumer organisations and public regulators, depending on the decision of each Member State. The Directive does not provide for individual victims or consumers to bring legal action on behalf of a whole group of consumers, as is the case with US class actions. As the Directive takes a minimum harmonization approach, Member States are free to introduce this option. However, it is only found in a few Member States.⁴ Apart from the fact that this creates a certain similarity to US class actions, which are often politically contested, the reason is often a practical one. Legal standing of individuals for representative actions depends on a clear commitment to how an individual should finance such a mass action. There is hardly any clear legal framework for third-party litigation funding in any Member State,⁵ and access to such funding is often unclear. The right for individuals to bring a representative action would therefore have been meaningless in many Member States anyway. As will be shown in this article, financing, or rather the lack of financing options, is also a lever that is used politically to avoid burdening the economy with too many representative actions.

1.2 Financial resources of qualified entities

Only where contingency fees are available or third-party funding (TPF) is permitted is it a realistic option for qualified entities (or individuals) to take legal action on behalf of a whole group. According to Article 20 RAD, Member States must ensure that the effective use of representative actions does not fail due to a lack of financial resources.⁶ Article 20 para 2 lists examples of state support such as 'public funding, including structural support for qualified entities, limitation of applicable court or administrative fees, or access to legal aid.' However, this is a vague obligation and does not give consumer associations a direct claim for funding from the state. Most established

³ For example, Sec. 123 German Civil Procedure Code: 'The granting of legal aid does not affect the obligation to reimburse the costs incurred by the opposing party.'

⁴ The most important instrument available for class actions initiated by individuals are group actions before the England and Wales Competition Appeal Tribunal (CAT rules 78 (19-(4) 2015); in the EU a similar approach has been taken in Denmark (Sec. 254c (1) Administration of Justice Act 2008 - <https://iclg.com/practice-areas/class-and-group-actions-laws-and-regulations/denmark>); and Sweden (Sec. 4 Group Proceedings Act 2002).

⁵ BIICL Study 'Mapping Third Party Litigation Funding in the European Unions' p. 8 ('main findings'): https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/civil-and-commercial-law/third-party-litigation-funding-tplf_en (last visited 18 February 2026).

⁶ Article 20 para 1: 'Member States shall take measures aiming to ensure that the costs of proceedings related to representative actions do not prevent qualified entities from effectively exercising their right to seek the measures referred to in Article 7.'

consumer associations are dependent on receiving state subsidies, as is customary in Austria and Germany, or on financing themselves through membership fees. Insofar as ad hoc founded organizations also have the right to take legal actions⁷, access to funding for legal action is particularly important because they do not regularly receive government subsidies.

German consumer centers are in a comparatively good position in this regard, but they are not in the position to take every mass harm event in consumer law to court. This can be illustrated by the annual report of the „*Verbraucherzentrale Bundesverband – vzbv*“ for 2024.⁸ *Vzbv* is the umbrella organisation of German consumer organisation and the most active in bringing actions in the interest of consumers. In 2024, *vzbv* had a total budget of approx. 26 million Euros with 25,35 million Euros coming from public funds. Approx. 475.000 Euros are independent income such as member fees and approx. 33.000 Euro income have been generated from contract fines and adverse cost orders. Fixed costs (rent, staff etc.) and costs for market screening aggregated to an annual amount of more than 20 million Euros. Less than 700.000 Euros were spent for representative actions (in 2023: approx. 900.000 Euro). The annual report by *vzbv* does not give details on how the 700.000 Euros were spent, but it is very likely that these were payments for adverse costs and costs for their own lawyers. Attorneys who represent the *vzbv* in court are often paid an hourly fee that exceeds the statutory rate which is based simply on the amount in controversy and very low in collective redress proceedings (cf. IV.2.). Only the statutory tariff for the claimant's lawyers are to be reimbursed by the defendant if the case is won. The difference must be borne by the *vzbv* itself. However, if they want to hire well-qualified lawyers, this is often the only alternative. This example of a comparatively well-resourced German consumer association clearly shows that cases can only be brought before the courts on a very selective basis. Experience in recent years has shown that TPF is indispensable for consumer associations, if they want to make a well-balanced use of the budget available to them and offer for example not only court enforcement of consumer claims, but primarily consumer counseling in numerous local advice centers.

II. CONCERNS ABOUT TPF – DIFFICULT TIMES FOR FUNDERS

TPF is a growing market with a global industry worth 40-80 billion Euros per year; approximately 100 funders are active in Europe.⁹ Many disputes can be litigated today only with the help of TPF. This is not only true for consumer law cases, but all the more for many cartel damages actions and

⁷ The RAD leaves this to the decision of the Member States. In Germany, e.g. qualified entities must – among other requirements to be fulfilled – have been registered at least for one year before they can file a representative action (Sec. 4 CREA and Sec. 4 Injunctions Act). This allows in principle to establish a new organisation with the primary goal of enforcing the claims arising from a particular mass harm event. In complex cases the preparation of such an action will take at least a year anyhow.

⁸ Annual Report vzbv 2024, available at <https://jahresbericht.vzbv.de/2024/bericht/rechenschaftsbericht> (last visited 18 February 2026).

⁹ BusinessEurope, Position Paper ‘Third Party Litigation Funding: contribution to the Commission study’, p. 2-3, available at https://www.bes-europe.eu/wp-content/uploads/2025/02/2024-09-02_commission_study_third_party_litigation_funding-8ea-1.pdf (last visited 18 February 2025); Poncibò/E. D’Alessandro, State of play of the EU private litigation funding landscape and the current EU rules applicable to private funding, in: European Parliamentary Research Service (eds.), *Responsible private funding of litigation - European added value assessment*, 2021, pp. 3-14, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662612/EPRS_STU\(2021\)662612_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662612/EPRS_STU(2021)662612_EN.pdf) (last visited 18 February 2026).

capital market cases. What is TPF and why is it such a controversial issue? There are many definitions of TPF. A common description is as follows:

„TPF is an arrangement whereby a third-party, typically an independent commercial funder with no prior connection to or legitimate interest in a dispute, agrees to finance all or part of the legal costs of a party to an action in exchange of a share (whether fixed or by way of percentage) of the proceeds, if the claim is successful.“¹⁰

Although the importance of TPF for access to justice cannot be seriously disputed, there are numerous concerns and objections to this type of financing. Should civil litigation be considered an investment with the risk of a „litigation industry“? Does the involvement of an external financier lead to the abuse of court proceedings? Is there a risk that financiers will interfere massively in strategic litigation decisions, thereby not only jeopardizing the independence of the lawyer, but also potentially acting against the interests of the consumers they are supporting? Is there generally a significant conflict of interests between the financier and the financed party, even if their interests appear to coincide at first glance? It has repeatedly been pointed out that conflicts of interests may arise, particularly in settlement negotiations. If, from the funder's point of view, the amount invested in a particular litigation has already been recouped through the proposed settlement, such a settlement may be concluded, even though continuing the proceedings may be in the interests of consumers and may be promising. At this point, the interests of consumers, the qualified entity, and the funder, which are otherwise jointly focused on winning the lawsuit, may diverge. These questions have led to calls for clear legal regulation of TPF or even significant restrictions.¹¹ But even without legislative action, individual court rulings have already expressed skepticism toward TPF.

In Germany, in 2018 and 2019 the Federal High Court decided that some types of representative actions become inadmissible because of the use of TPF by the consumer association bringing the action.¹² Both decisions referred to skimming-off actions under German competition law¹³, which have enabled consumer associations since 2005 to sue traders for illegally gained profits if the defendant has harmed a large number of consumers and the individual damages are trivial. The amount to be recovered from the defendant is not a compensation distributed to consumers but rather goes to the Federal state budget which is administered by a public regulator.¹⁴ The public regulator had agreed in both cases to the funding agreement concluded by the consumer association and had also agreed that the success fee will be deducted from the amount to be paid to the Federal budget. Nevertheless, the court held that funding as such was not acceptable for these actions the number of which the legislator obviously wanted to keep low. In the opinion of the court, the profit-making incentives for the funders tend to override the consumer interest and violate standards of morality and good faith and fair dealing. As a result, the court denied legal standing

¹⁰ Cf. for example European Parliament, Resolution of 13 September 2022 with recommendation to the Commission on Responsible private funding of litigation (2020/2130(INL)), Introduction sub B and similar Article 3 lit. a of the Proposal; ELI Principles Governing the Third Party Funding of Litigation, 2024, pp. 10, 12.

¹¹ For details on the European Parliaments initiative for a Directive on ‘Responsible private funding of litigation’, see below VI.

¹² Federal Court of Justice (*Bundesgerichtshof*), 13 September 2018, I ZR 26/17, *Neue Juristische Wochenschrift* 2018, 3581; Federal Court of Justice, 9 May 2019, I ZR 205/17, *Neue Juristische Wochenschrift* 2019, 2691.

¹³ Sec. 10 German Unfair Competition Act.

¹⁴ Bundesamt für Justiz (BfJ).

of the funded consumer associations. The decisions were heavily criticized in legal literature¹⁵ and they led to no further such lawsuits being filed in the following years. Only when implementing the RAD the German lawmakers revised the case law. Since October 2023, TPF has been expressly declared admissible for skimming-off actions under Sec. 10 Unfair Competition Act.

In the UK in 2023, the Supreme Court decided in the famous *Paccar* case¹⁶ that litigation funding agreements in opt-out proceedings before the Competition Appeal Tribunal (CAT) are equivalent to damages-based agreements (DBA) and therefore banned by Sec. 47C (8) Competition Act. As a result, almost all funding agreements in competition law cases became unenforceable. There was enormous uncertainty in the litigation financing industry and considerable legal uncertainty as to how a funding agreement could still be structured. There was a bill to restore the pre-*Paccar* position of funders in March 2024, but it was dropped in summer 2024 due to the upcoming elections.¹⁷ The new Government indicated that legislative change will not be considered before the Civil Justice Council has completed a report. The report, published 2 June 2025, recommended that the UK Government should reverse the impact of the *Paccar* decision and introduce a ‘light-touch’ statutory framework.¹⁸

The debates about third-party financing have by now become more political in nature. It was no coincidence that the conservative wing of the European Parliament launched this debate at a time when it became clear that the RAD could no longer be prevented and might lead to more representative actions in some Member States. In July 2021, the so-called *Voss-Report* by the Committee on Legal Affairs of the European Parliament suggested to take legal action in order to develop a – very restrictive – legal framework for commercial litigation funding in Europe. It resulted in a resolution of the European Parliament in September 2022 which recommends that the EU Commission adopts a Directive on Responsible private funding of litigation. For more details see below VI.

III. FUNDING OF COLLECTIVE ACTIONS: THE POSITION OF THE RAD

III.1 Safeguards against the misuse of TPF

The legislative history of the RAD reveals some distrust of TPF and of a US style litigation industry, but the final version of the RAD does not ban TPF completely. It is up to the Member States to decide on the admissibility of TPF and its conditions. However, the RAD does impose certain requirements in cases where representative actions are in fact financed with the help of TPF in its Article 10. Article 10 para 1 emphasizes the primacy of the collective interests of consumer and Member States must ensure that conflicts of interests are prevented. Article 10 para 2 prohibits that any decisions of qualified entities, including decisions on settlements, are unduly influenced by funders. Funding providers must not be competitors of the defendant nor dependent on the

¹⁵ A. Stadler, *Sittenwidrigkeit der Prozessfinanzierung eines gemeinnützigen Verbraucherschutzverbandes*, Juristenzeitung (JZ) 203–206 (2019); M. Sattler, No Third Party Funding of Skim-Off Claims, *Zeitschrift für Internationales Wirtschaftsrecht*, 78 (2019); M. Loschelder, *Anmerkung zu BGH: Prozessfinanzierung bei Gewinnabschöpfungsansprüchen unzulässig*, Gewerblicher Rechtsschutz und Urheberrecht in der Praxis (GRUR-Prax), 534 (2018); A. Halfmeier, *Rechtsmissbrauch durch Prozessfinanzierung bei Gewinnabschöpfungsklage*, Wirtschafts- und Bankrecht (WuB), 27 (2019).

¹⁶ R(on the application of PACCAR Inc. and others (Appellants) v. Competition Appeal Tribunal and others, UKSC/2021/0078, Supreme Court, 26 July 2023, (2023) UKSC 28.

¹⁷ For details on the aftermath of PACCAR, <https://www.hoganlovells.com/en/publications/the-aftermath-of-paccar> (last visited 18 February 2026).

¹⁸ The report, *Civil Justice Council, Review of Litigation Funding – Final Report*, is available at <https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report.pdf> (last visited 18 February 2026).

defendant in order to prevent conflict of interests. Member States shall ensure that courts have the power to enforce compliance with these rules, and for the sake of transparency, qualified entities shall disclose to the court ‘a financial that lists sources of funds used to support the representative action.’

III.2 Funders’ success fee

The RAD does not provide a clear picture of whether the funder’s success fee can be deducted from the consumers. awarded compensation. There are two clear restrictions. According to Article 12 para 1 RAD the loser pays principle shall apply to collective actions and para 2 clearly states that individual consumers must not bear the costs of litigation (as they are not parties to the representative action). In some Member States such as the Netherlands and Austria, qualified entities traditionally do book building in mass harm situations before they file a representative action for various reasons. In Austria, very often an assignment of consumer claims was necessary to aggregate the claims. In the Netherlands, qualified entities are often ad hoc founded foundations (‘stitchings’) which will later compete to be appointed the lead representative in the proceedings. The court’s selection depends, among other things, on how many victims an organization represents in the particular case. For this purpose, but sometimes also for financing, consumers or victims of mass tort may be required to register for a fee. Article 20 para 3 RAD imposes some restrictions on this practice. Qualified entities may ask only for a ‘modest entry fee’, when preparing and litigating the enforcement of consumer claims by a representative action. In Austria, the legislator has fixed the maximum amount at 250 Euros,¹⁹ many other Member States do not have an explicit rule in this respect.

Both regulations can be used in order to argue in favour of a prohibition of success fees at the expense of consumers. On the other side, it becomes clear from Article 10 that the RAD did not intend to impose a complete ban on TPF. Of course, the European legislator was aware that any third-party funding involves success fees. Against this background, it was also clear and inevitable that a success fee would ultimately be borne by consumers whose claims are to be enforced by the representative action. The only way to avoid this result would have been a clear rule on cost shifting. If the success fee to be paid by the claimant’s side were to be regarded as part of the legal costs and passed on to the defendant under the loser-pays principle, consumers would receive the full amount of compensation. This highly controversial solution is not mentioned by the RAD and was apparently not even discussed in most Member States. It was, however, implemented in the Netherlands²⁰. The disadvantages of such a cost shifting are obvious: in addition to compensatory damages, the defendant must pay the contingency fee, the amount of which he has no influence over. Experience with English cost rules has shown that such provisions have proven to drive up costs and have been abolished there.²¹ In 2009, the *Jackson* Report identified the recoverability of Conditional Fee Arrangements as a key driver of rising litigation costs and pointed out the

¹⁹ Sec. 9 para 4 QEG (Act on Qualified Entities): the entry fee must not exceed 20% of the amount claimed by the individual consumer and the maximum amount is 250 Euro.

²⁰ Art. 1018l Abs. 2 Dutch Civil Procedure Code: ‘A judgment under Article 1018i contains an order for costs, whereby the court may, insofar as necessary and in derogation from Book 1, Section 12, § 2, order the unsuccessful party to pay reasonable and proportionate legal costs and other costs incurred by the successful party, except where this would cause injustice.’ This includes the court’s power to a cost shifting with respect to the funder’s success fee, I. Tzankova, *Collective Actions in the Netherlands – a step forward?*, *Zeitschrift für Zivilprozess – International - ZZPInt*, 83 at 95 (2020).

²¹ For details cf. Chr. Hodges in Chr. Hodges/A. Stadler, *Resolving Mass Disputes*, Cheltenham, 2013, Ch. 5, p. 122.

‘excessive profits’ of the legal profession on the one hand and the considerable burden on the defendant on the other.²²

As a result, the RAD cannot be used to argue against consumers ultimately having to pay the success fee. Of course, Member States must ensure that consumers who join such representative actions by opting-in are aware of the cost implications and accept that part of their compensation will be paid to the funder.

IV. TRANSPOSITION OF THE RAD IN GERMANY

IV.1 Restrictions for TPF

In October 2023, the German Consumer Rights Enforcement Act (CREA) came into force. The implementation of the RAD in Germany clearly demonstrates the legislature's attempt to avoid a flood of representative actions in the future and, as far as possible, to limit activities to the large, established consumer associations. The new rules do not ban TPF, but in a last-minute decision during the legislative process a strict cap on success fees was implemented for representative actions. In addition to traditional injunctive relief, consumer associations can now bring redress actions as required by the RAD or — as provided for in German law since 2018 — bring an action for only a declaratory judgment on the requirements of the defendant's liability. The latter type of collective action was retained, even though it had not been successful in the past. The mere declaratory decision by the court on certain elements of the defendant's liability is not particularly helpful for consumers, as they then have to sue the defendant for damages individually in follow-on lawsuits. Consumers who register for the declaratory action benefit from the binding effect of the declaration, but this type of legal enforcement is completely unsuitable for minor damages in particular.

For both types of representative actions²³ Sec. 4 CREA provides the following restrictions on funding in paragraph 2:

A representative action is inadmissible if it is financed by a third-party

1. who is a competitor of the trader sued
2. who is dependant on the trader sued
3. who is promised an economic share of more than 10 percent of the amount to be paid by the trader being sued, or
4. which is expected to influence the conduct of the lawsuit by the qualified entity, including decisions on settlements, to the detriment of consumers.

Whereas the restrictions listed in number 1, 2 and 4 are required by the RAD, the cap on funders' success fees in number 3 is unique in German law. It is remarkable because the average share of funders on the market is 25-35 % and there was no debate in Parliament on the 'if' and 'how' of the cap. In principle, commercial litigation financiers will not be prepared to provide financing under these conditions as the return of the investment will be too low. In addition, funders who are in principle willing to finance a representative action face additional problems. The CREA leaves completely open the question of whether and how consumers can participate in such a

²² R. Jackson, *Final Report*, pp. 109 ff. The success fee can also be classified as damage incurred by the claimant and could then be the subject of a substantive claim for damages. Details as well as the approach as such are disputed, see Lieberknecht, *Die materiell-rechtliche Ersatzfähigkeit von Kosten der Prozessfinanzierung*, Neue Juristische Wochenschrift, 3318 (2022). For Austria this approach has been rejected by K.Kitzenberger/M. Briza, *Praktische Fragen der Prozessfinanzierung im Zivilverfahren*, in: A. Fremuth-Wolf, *Prozessfinanzierung in Österreich*, Vienna, 2025, pp. 219 ff. at 239.

²³ The cap does not apply to skimming-off illegally gained profit actions under Sec. 10 Unfair Competition Act.

financing agreement initiated by a consumer organisation. The only certainty is that they must agree to the deduction of the success fee from their share. The consumer association cannot simply dispose of part of the compensation to which consumers are entitled. Since German consumer associations traditionally do not engage in book building prior to filing a lawsuit and do not 'collect' claims if they do not proceed according to the assignment model, there is usually no contact between the qualified entity and the injured parties. This is particularly true when the group of consumers can only be described in general terms. To make matters more difficult, the German implementation allows consumers to opt-in to a representative redress action up to three weeks after the end of the oral proceedings.²⁴ This means that it is only once the core of the proceedings has been concluded that it is clear who is participating and claiming compensation.

One could consider the registration ('opt-in') for the financed lawsuit as consumer consent to the financing agreement, if transparency is provided,²⁵ but this is largely rejected in legal literature.²⁶ Should a financing agreement be concluded despite these circumstances, it is currently unclear how and when the success fee may be paid to the funder. The CREA does not allow the funder's share to be paid directly from a compensation fund established in case of a successful representative action.²⁷ Only the claims of registered consumers approved by the fund administrator and the costs of the fund administrator himself may be paid from the total amount paid by the defendant. It is unclear whether the problem was overlooked or deliberately left unregulated in order to potentially deter financiers. In a worst-case scenario, the funder would have to collect its share mosaic-like from each individual consumer.²⁸

Of the sixteen representative action lawsuits which have been published in the official claims register²⁹ by the end of January 2026, the majority does not appear to be third-party funded. Consumer associations have decided to use the new instrument for some straightforward cases with no high amounts of compensation involved. Two very prominent actions against *Vodafone* and *Amazon prime* are based on allegedly illegal general contract terms to increase monthly fees. At least the calculation of the individual damages is a simple arithmetic problem and can be easily handled in the context of such a representative action. The amounts of damages claimed are between 30 -70 Euros per consumer. After deducting a success fee for a financier, only amounts would be paid out for which many consumers would not bother to opt in. Even without TPF the registration figures are low under the opt-in system. Although in absolute numbers, the participation rates appear relatively high, with some cases involving more than 100,000 consumers. However, in the *Vodafone* and *Amazon prime* cases this only represents around 1% of those affected. However, a lawsuit filed in November 2025 at the Court of Appeal in Hamburg³⁰ by an Austrian consumer association (VSV) against *Meta* is more promising in this respect and has the support of

²⁴ Sec. 46 para 1 CREA.

²⁵ A. Stadler in H. Musielak/W. Voit, *Commentary on the German Code of Civil Procedure*, Munic (22nd ed. 2025), Introduction VDuG mn. 26; K. Rinck, *Streuschadensbekämpfung in Anwendung der Cy Pres-Doktrin – Ein Vorschlag auf rechtsvergleichender Basis zur Umsetzung der Verbandsklagerichtlinie in das deutsche Recht*, Tübingen 2023, 169.

²⁶ See e.g. F. Maultzsch, *Das neue Verbraucherrecht durchsetzungs-gesetz – VDuG*, Zeitschrift für Zivilprozess - ZZP 137, 119 (2024); H. Wais in: D. Skauradszun, *Commentary on CREA (VDuG)*, Munich (1st ed. 2024), Sec. 4 VDuG mn. 18 f; P. Röthemeyer, *Commentary on CREA (VDuG)*, Baden-Baden (1st ed. 2024), Sec. 4 VDuG mn. 17.

²⁷ Sec. 22-38 CREA.

²⁸ For details H. Wais, *Drittfinanzierte Verbandsklagen – wer zahlt?*, Neue Juristische Wochenschrift (NJW), 1441 Rn. 3 (2025).

²⁹ <https://www.verbraucherschutzverein.eu/sammelklage-gegen-meta/>
https://www.bundesjustizamt.de/DE/Themen/Verbraucherrechte/VerbandsklageregisterMusterfeststellungsklagenregister/Verbandsklagenregister/Verbandsklagen/Verbandsklagen_node.html (last visited 18 February 2026).

³⁰ File no. 11 VKl. 1/25, for details see meta-klage.de

a commercial funder. The action is based on the allegedly unlawful use of so-called business tools by *Meta*, which completely monitor the internet behavior of *Facebook* and *Instagram* users. According to media reports, a success fee of 9.5% was promised to *Padronus*.³¹ There are likely several reasons for the funder to agreeing to such a low success fee in this particular case: firstly, the maximum allowed success fee would be 10 % anyhow, secondly, the high damages of €5,000 or €10,000 claimed per user may sum up to an attractive amount for a funder. To date, German courts had only awarded small amounts in damages for immaterial losses in cases of GDPR violations (50-500 Euros). The Federal High Court³² recently ruled that a data leak at Facebook, which resulted in users' mobile phone numbers being freely accessible on the internet, justified compensation for immaterial damages ('pain and suffering') due to the loss of control over one's own data, but only in the amount of approximately 100 euros. The *Meta* case about the use of its 'business tools' is different. The permanent and complete monitoring of Internet activities for *Meta's* own economic benefit and without the consent of users is a serious violation of personal rights and data. Therefore, several first-instance decisions by German courts in individual lawsuits³³ have already awarded compensation between 1.500 and 5.000 Euro. The cases are all pending on appeal, but *VSV* and *Padronus* seem to be optimistic that the court will award 5.000 Euros for each adult *Meta* user and up to 10.000 Euros for the allegedly illegal monitoring of minors. Due to these high amounts, a large number of *Meta* users are expected to participate via opt-in. As a result, the overall amount to be collected by the funder is promising. Secondly, the lawsuit is being brought by an Austrian consumer association, which, in accordance with Austrian traditional practice, requires advance registration of the injured parties who wish to participate. The registration with *VSV* is linked to a declaration of consent regarding the financing of the lawsuit and followed by the official registration in the German claims register.

IV.2 Rules on costs for collective redress actions in Germany

Against the background of very difficult access to TPF, how can qualified entities finance representative actions under the regime of RAD and CREA?

To implement Article 10 RAD, German law reduces the litigation risk for qualified entities by implementing a cap on the amount in dispute in representative actions, which also automatically limits court and attorney fees. These maximum limits, regardless of the actual amount in dispute, are 300.000 Euro for collective redress actions, 250.000 Euro for collective actions for injunctive and declaratory relief, and 410.000 Euro for actions skimming off illegally gained profit (Sec. 10 Unfair Competition Act).³⁴ The downside of this regulation, however, is that the statutory fees for lawyers which depend on the amount in dispute are very low. The plaintiff's lawyer in a redress action is legally entitled to only approximately 8,200 Euro. No lawyer will represent a qualified entity (and thousands of consumers) in complex mass proceedings for such a low amount. Consumer organizations therefore only have a chance of finding a lawyer if they agree to pay a fee that is above the standard legally fixed rate, usually an hourly fee. As mentioned earlier, this is, however, not reimbursed by the defendant, meaning that the qualified entity is left with considerable

³¹ <https://www.meta-klage.de/> and <https://www.padronus.at/meta-klage> (last visited 18 February 2026).

³² Federal Court of Justice, 18 November 2024, VI ZR 10/24, *Neue Juristische Wochenschrift* (NJW) 298 (2025).

³³ E.g. District Court Leipzig, 4 July 2025, 05 O2351/23, ZD 2025, 580; for a list of judgments in the *Meta* case cf. <https://www.test.de/Datenschutzverstoss-Meta-sieht-fast-jeden-Klick-6234106-0/#id6234111> (last visited 18 February 2026).

³⁴ Sec. 48 German Legal Cost Act (*Gerichtskostengesetz*).

costs even if it wins the case. Each organization will therefore select very carefully and decide which cases can be brought before the courts.

V. OTHER ACTORS IN THE MARKET OF LEGAL SERVICES

V.1 Enforcement of claims by SPVs based on the assignment model

Due to the fact that consumer associations cannot handle all mass harm events in consumer law, not to speak about the enforcement of consumer claims in cartel law or capital market law, many debt collecting companies (claims vehicles or ‘special purpose vehicles’ - SPVs) operating on the assignment model have entered the legal services market in Germany. These are specialized entities, often legal tech companies, whose sole business model is to bundle and to enforce assigned claims in return for a success fee.³⁵ Their target group currently consists of consumers and airline passengers seeking compensation for delayed or canceled flights on one side. In antitrust damages law, however, they are particularly active on behalf of companies of all sizes that do not wish to enforce their claims themselves.³⁶ This is of practical importance for SMEs which do not have their own legal departments and who shy away from the effort of enforcing their own damages claims. In antitrust law hundreds of actions are pending before German courts that have been filed by claims vehicles.

The advantage for the assignors – whether consumers or companies - lies in the fact that legal enforcement is completely free of cost and risk. Litigation costs – often including adverse costs – are paid by a third-party funder under a funding agreement with the SPV. Sec. 4 CREA with its 10% cap on success fees does not apply to these SPVs. Debt collecting companies sue in their own name and outside the rules governing representative actions.

At least in consumer law, this has given rise to a competing model of law enforcement that relieves the burden on consumer associations to some extent but is not free of charge for the assignors and consumers. Even before the RAD was implemented, German consumer associations had already left the enforcement of air passenger compensation entirely to such legal tech companies. The European Regulation³⁷ which protects air passengers from delayed and cancelled flights grants a lump-sum compensation which depends only on the distance of the flight and the delay. This is independent of individual factors and can be calculated using simple software. In most cases the lump-sum amount does not compensate for actual financial losses of air passengers. Therefore, they are apparently willing to pay a success fee to a legal tech company and prefer to have nothing to do with the enforcement of their claim. German district courts are inundated with thousands of

³⁵ For details of the assignment model: Th. Riehm, *Effektive Rechtsdurchsetzung durch finanzierte Abtretungsmodelle*, Neue Juristische Wochenschrift (NJW) 2713 (2024); Th. Heiß, *Massenverfahren und die Zukunft des deutschen Zivilprozesses*, Neue Juristische Wochenschrift (NJW), 1625 (2025); A. Stadler, *Abtretungsmodelle und gewerbliche Prozessfinanzierung bei Masseschäden*, Wirtschaft und Wettbewerb (WuW), 189 (2018); A. Stadler, *Funding of mass claims in Germany - caught between a rock and a hard place?* in Willem van Boom, *Litigation, costs, funding and behaviour - implications for the law*, London, 2016, p. 201 – 221; A. Stadler, *Third party funding of mass litigation in Germany Entrepreneurial Parties – Curse or blessing?*, in L. Cadet/B. Hess/M. Requejo (eds), *Privatizing Dispute Resolution - Trends and Limits*, Baden-Baden, 2019, 209-232.

³⁶ For a detailed analysis cf. H. Hiss, *Bündelung von Kartellschadensersatzansprüchen im Lichte des Rechtsdienstleistungsgesetzes*, Baden-Baden 2023. Recently the Federal Court of Justice imposed restrictions on the assignment model, BGH 12 May 2026 KZR 6/24, GRUR-RS 2026, 10222: in the cartel damages case thousands of claims arising from many jurisdictions were in controversy and the Federal Court of Justices estimated that it would take approx. 38 years to decide the case. The Court concluded that this was an abuse of the assignment model. Today it is not clear what the implications for future claims will be, cf. A. Stadler, *Case note*, Mass Claims Journal Vol. 6/2026, p. 55.

³⁷ Regulation (EG) 261/2004.

such lawsuits because airlines often do not pay voluntarily.³⁸ Consumer organizations have not yet taken up these cases — there are simply too many of them. The business model of debt collecting companies exists parallel to the representative actions system of CREA, and the RAD does not undermine it in any way.

V.2 Challenges of the assignment model

However, the assignment model used by debt collection companies has been subject to many objections and attacks, as has third-party financing. Unsurprisingly, the defendants sued by debt collecting companies, especially in the big antitrust cases, regularly vehemently contest the validity of the assignment to the SPV. The German Legal Services Act provided arguments for this, as it not only requires debt collection companies to register in advance, but also explicitly prohibits conflicts of interests for the debt collector. Violations of the Legal Services Act can render the assignment to the SPV null and void and thus have severe consequences for the assignors. The defendants attacking the assignment model found themselves in a natural alliance with their attorneys, so to speak. The legal profession vehemently opposed the spread of the assignment model from the outset because it felt disadvantaged by the different framework conditions. In particular, the fact that German lawyers are not allowed to charge contingency fees,³⁹ but debt collection agencies are, led to great discontent.

In 2021, the German legislature attempted to create a level playing field for these cases by also allowing attorneys to charge contingency fees for claims up to 2,000 Euro⁴⁰ which is a rather doubtful compromise. It took several landmark decisions by the Federal High Court to clarify the compatibility of the assignment model with applicable law.⁴¹ Recently the Federal Court of Justice imposed restrictions on the assignment model, BGH 12 May 2026 KZR 6/24, GRUR-RS 2026, 10222: in the cartel damages case thousands of claims arising from many jurisdictions were in controversy and the Federal Court of Justices estimated that it would take approx. 38 years to decide the case. The Court concluded that this was an abuse of the assignment model. Today it is not clear what the implications for future claims will be, cf. Astrid Stadler, Case note, Mass Claims Journal Vol. 6/2026, p. 55.

While there is a relatively clear legal framework for debt collection agencies now, litigation financing (as an important component of the assignment model) has not yet been regulated by law — with the exception of Sec. 4 CREA.

VI. PROPOSAL FOR A DIRECTIVE ON RESPONSIBLE PRIVATE FUNDING OF LITIGATION BY THE EUROPEAN PARLIAMENT 2022

It is clear that TPF is an effective lever for strengthening or weakening representative actions. In September 2022, the European Parliament adopted a proposal to the European Commission for a

³⁸ In 2024, 131.000 claims based on air passenger rights were filed before German courts; for more details: <https://www.lto.de/recht/justiz/j/klagewelle-gegen-airlines-berlastet-gerichte> (last visited 18 February 2026).

³⁹ Sec. 4a Lawyers Remuneration Act (*Rechtsanwaltsvergütungsgesetz*), Sec. 49b para 2 Federal Lawyer's Act.

⁴⁰ Law on the Promotion of Consumer-Friendly Offers in the Legal Services Market, 10 August 2021, Federal Law Gazette 2021 part I no 53, p. 3415: the new act imposed stricter regulations for the registration of legal service providers, but also allowed contingency fee arrangements for lawyers for small claims.

⁴¹ Federal Court of Justice, 13 June 2022, Via ZR 418/21, Neue Juristische Wochenschrift (NJW) 2022, 3350 para 50; Federal Court of Justice, 13 July 2021, II ZR 84/20, Neue Juristische Wochenschrift (NJW) 2021, 3046 para 47, 49 et seq, Federal Court of Justice, 5 December 2022, Via ZR 998/22, BeckRS 2022, 37853, para 14.

Directive on TPF.⁴² The proposal is somewhat more moderate than the previous Voss report⁴³ that had taken the initiative, but still very restrictive in its approach and problematic in many respects. In its entirety it could have a deterrent effect on financiers and could significantly affect the availability of TPF in Europe. Some groups may welcome this effect given the reservations about TPF described at the outset. However, the proposal generally recognizes that TPF can facilitate access to justice.⁴⁴ One main point of criticism is the intended overregulation.⁴⁵ This is not the place to discuss the EU Parliament's proposals in detail,⁴⁶ but it should be outlined in broad terms.

A fundamental problem with the proposal is that it is based on the premise, without further justification,⁴⁷ that TPF is problematic, tends to disadvantage consumers, and must therefore be strictly regulated.⁴⁸ The Australian regulation on litigation financing is used as a reference, particularly in the Voss-Report,⁴⁹ but the Australian system has changed repeatedly in recent years depending on the political orientation of the government⁵⁰ and is based on a class action system modeled on the US system, which has different framework conditions than European civil proceedings.⁵¹

The basic idea of the proposal is to establish a uniform regulatory framework across the European Union with a number of safeguards such as an authorization system and supervision of registered funders by public regulators, caps on excessively high awards for funders and transparency requirements regarding the funding agreements.

⁴² European Parliament resolution of 13 September 2022 with recommendation to the Commission on Responsible private funding of litigation 2020/2130(INL), the text is available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0308_EN.html (last visited 18 February 2026).

⁴³ Report with Recommendation to the Commission on Responsible private funding of litigation, Committee on Legal Affairs, Rapporteur: Axel Voss, 2020/130(INL), the text is available at https://www.europarl.europa.eu/doceo/document/JURI-PR-680934_EN.pdf (last visited 18 February 2026).

⁴⁴ Introduction sub C.

⁴⁵ B. Hess, Europäische Perspektiven der Prozessfinanzierung, in: A. Fremuth-Wolf (ed.), *Prozessfinanzierung in Österreich*, Vienna 2025, pp. 208-211.

⁴⁶ For a more detailed discussion cf. B. Gsell/C. Meller-Hannich/A. Stadler, *Prozessfinanzierung in Deutschland vor dem Hintergrund europäischer Regelungsiniciativen*, Juristenzeitung (JZ), 989-1000 (2023).

⁴⁷ B. Hess, Europäische Perspektiven der Prozessfinanzierung, in: A. Fremuth-Wolf (ed.), *Prozessfinanzierung in Österreich*, Vienna 2025, pp. 207 f.

⁴⁸ B. Gsell/C. Meller-Hannich/A. Stadler, *Prozessfinanzierung in Deutschland vor dem Hintergrund europäischer Regelungsiniciativen*, Juristenzeitung (JZ), 989 at 990 (2023).

⁴⁹ Voss Report p. 3/28 - 4/28, 25/28-26/28.

⁵⁰ As early as 2006, the High Court of Australia approved of the use of TPF in *Campbell Cash & Carry Pty Ltd. v. Frostif Pty Ltd* (2006). In 2017, the Victorian Law Reform Commission published a consultation paper and its report recommended regulation of TPF at the national level, VLRC, *Access to Justice – Litigation Funding and Group Proceedings: Report* (March 2018). Since 2020, litigation funders have been required to hold an Australian Financial Services Licence and to comply with investment scheme regulations. The Corporations Amendment (Litigation Funding) Regulations 2022 revised this regulation and since the end of 2022 litigation funders have been exempted from the managed investment scheme and financial services licensing (<https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-368mr-asic-amends-relief-for-litigation-funding-arrangements/> - last visited 18 February 2026). There is no cap on funders' success fee despite a draft bill of 2021 of the liberal government which failed to pass the Senate.

In legal literature it is argued that the overall decrease in the number of funded class actions in Australia since 2018 is the result of numerous regulatory changes; for details on the situation in Australia see P. Aldermann, *At a glance: Regulation of litigation funding in Australia*, November 2024 at <https://www.lexology.com/library/detail.aspx?g=e133b4b8-75d6-47e0-a385-d7b8e625f106> (last visited 18 February 2026).

⁵¹ For a comparative overview of the funding situation in Australia, Canada, UK and the EU G. Solas, *Third Party Funding*, Cambridge, 2019, pp. 38-122.

VI.1 Supervision of funders

The proposal starts with the assumption that there is a ‚regulatory vacuum‘ in the field of TPF resulting in a risk of funders to operate non-transparently.⁵² In order to regulate litigation funding activities the European Parliament suggests to establish a system of authorization and supervision of funders by a public regulator in each Member State.⁵³ This includes adequate safeguards such as minimum standards for the avoidance of conflicts of interests, transparency, independence, governance and capital adequacy of funders.⁵⁴ It seems questionable whether such a strict registration and monitoring system, which involves a high level of administrative effort, is really necessary. It is based on the existing model of multi-level state supervision in the banking and insurance sectors. However, in these both sectors a strong supervision is legitimate. Banks and insurance companies are systemically important in the overall economic context. The state must not only protect individuals from the risks arising from the fundamentally long-term and capital-intensive legal relationships with these institutions and enhance consumer trust. It must also prevent the collapse of the banking and insurance system as such. Against this background, strong governance rules and minimum capital requirements are necessary, as is the strong monitoring of their compliance.

Unlike banks and insurance companies, commercial litigation financiers are not systemically important players.⁵⁵ For individuals, of course, funding is often essential for their economically important individual lawsuits. If a plaintiff is abandoned by their financier in the middle of a lawsuit due to lack of capital, insolvency, or the like, this is a problematic situation. However, the state does not generally intervene with a state supervisory system to protect individuals in risky transactions. As a general rule, it is up to each contract partner to carefully select its counterpart. Of course, the rapidly growing market also means that unscrupulous funders may want to get involved. However, it should also be noted that individual consumers rarely enter into contracts directly with litigation funders. TPF is usually sought by business-savvy companies or experienced consumer associations that are in a position to check the funder before concluding a contract. Individual consumers need less protection from litigation funders than from potentially unscrupulous debt collecting companies working with the assignment model and aggressive advertising on the internet. However, this is not the thrust of the European Parliament's proposal.

VI.2 Regulation of funding agreements

The EP's proposal furthermore suggests in Article 7 to impose particular fiduciary duties on funders in the interest of the funded party. These duties go much beyond what is applicable in other contractual relationships. Moreover, funders are prohibited from exercising undue influence on proceedings,⁵⁶ but it is unclear when influence exceeds the permissible level. It seems questionable whether the legitimate interest of the funder in monitoring its investment in a particular case is sufficiently taken into account. The financier can hardly be denied a certain say in a settlement agreement. The interests of funders and funded parties regularly coincide, and the only concern can be to prevent clear abuse in individual cases. On the other hand, a certain amount of influence by the funder can even be helpful and protect the courts and defendants from a plaintiff,

⁵² Introduction sub K.

⁵³ Articles 4 and 5, 8-10 of the Proposal.

⁵⁴ Articles 6, 12-15 of the Proposal.

⁵⁵ B. Gsell/C. Meller-Hannich/A. Stadler, *Prozessfinanzierung in Deutschland vor dem Hintergrund europäischer Regelungsvorschläge*, Juristenzeitung (JZ), 989 at 991 f. (2023).

⁵⁶ Article 14 para 2 of the Proposal.

who bears no cost risk, initiating expensive evidence-gathering and conducting or extending the proceedings in an unobjective manner.⁵⁷ The business sector often fails to mention in the discussion that involving a commercial financier significantly reduces the often-cited risk of abusive lawsuits. No funder will get involved in a case that they consider hopeless after thorough examination.

Art. 14 para 4 of the proposal suggests a general cap on the funder's award of 40 %. At first glance, this may seem a high threshold, but such an abstract cap on success fees is inappropriate and contradicts market economy principles and the contractual freedom of the parties involved.⁵⁸ Funders calculate their fees primarily on the basis of the risk they take in a particular case. If, in exceptional cases, they finance proceedings whose outcome is really uncertain, even a success fee of 50% might be acceptable. The decision should, however, be left to the discretion of the contracting parties within the always applicable limitations of freedom of contract. It may be better for a plaintiff to accept a high success fee than not to bring the case to court at all due to a lack of resources.

The proposal also suggests implementing more or less a general liability of funders for adverse cost orders (Articles 12 lit. c, 14 para 5, 18). According to Article 18 Member States shall ensure that courts can make a cost order against the litigation funder if the claimant party has insufficient resources to meet adverse costs. Even today, funders often already agree to pay for the defendant's legal costs should the defendant win the case. This, too, is a question of contract negotiations between the funder and the funded party. A generally imposed obligation of funders to pay for adverse cost orders shoots over the target. As a result, defendants would receive a much better protection than in other proceedings by having the funder as a debtor with sufficient financial resources. Granting this protection only based on the fact that litigation financing is involved hardly seems justified. Instead, courts should be able to require a security deposit for legal costs from a funder on a case-by-case basis.

Article 15 of the Proposal suggests imposing strict restrictions on the unilateral termination of a funding agreement by the litigation funder. Termination of the contract should basically only be permissible with the consent of the financed party or the court. This goes far beyond existing standards for terminating contracts. In particular, the court's permission is a significant encroachment on freedom of contract, especially since terminations must also be possible outside of pending court proceedings.

Last, but not least Article 16 of the proposal requires a far-reaching disclosure of funding agreements. There is, of course, a legitimate interest of the court and the defendant to know that there is TPF and who the funder is in order to prevent competitors to initiate proceedings against the defendant. The RAD has correctly identified this as a problem, but Article 16 goes beyond that standard. At the request of the court, a complete and unredacted copy of the agreement must be provided and it is not clear from the wording whether disclosure has to be made only to the court or also to the defendant. Any disclosure of the entire financing agreement to the defendant would be highly problematic and must be avoided. Not only does it often contain confidential business information about the funder, but it would also regularly give the defendant strategic advantages if they knew the scope and limits of the financing. Since this would regularly only affect the plaintiff, it would be a clear violation of the principle of equality of arms between the parties in the

⁵⁷ B. Gsell/C. Meller-Hannich/A. Stadler, *Prozessfinanzierung in Deutschland vor dem Hintergrund europäischer Regelungsvorschläge*, Juristenzeitung (JZ), 989 at 995 (2023).

⁵⁸ Article 14 para 4 leaves some room for higher rates in 'exceptional circumstances'.

proceedings. If it is deemed necessary that at least the court be aware of the contract, for example to identify clauses that could exert undue influence on the proceedings, disclosure must be limited to the court. The defendant may be granted access to excerpts at most.⁵⁹ However, the Federal High Court recently decided in favour of a more or less full disclosure of a funding agreement, see Federal High Court, 12 May 2026, KZR 6/24, GRUR-RS 2026, 10222 n. 81-82.

VI.3 Reaction of the EU Commission: Study on Mapping Third-Party Funding in the EU

The EU Commissions reaction to the proposal was hesitant. In order to prepare future legislative actions, the Commission commissioned a study on the situation of TPF in the EU Member States. The study ‘Mapping Third Party Litigation Funding in the European Unions’ by the British Institute of International and Comparative Law in London (BIICL) was published in March 2025.⁶⁰ Its aim was to collect and analyse information on legal regulations and practices of TPF in the EU and selected third countries (such as Switzerland, the UK and the US). It includes national reports and interviews with stakeholders. In many Member States there is no reliable data on the number of funded cases, but the study identified that across Europe the minimum value of a funded claim is between 1-14 million Euro. The funder’s share is between 20-30%. The interviews made an attempt to get a better picture on the positive and negative effects of TPF, but unsurprisingly the results are not clear. Among the positive effects a better access to court for parties that could not fund litigation otherwise was observed by 56% of the respondents, 34% emphasized that the support of funders provides professionalisation and expertise in complex cases, and 28% confirmed a filtering effect as cases with a low chance of success will not be funded. On the other side, 25-26% of the respondents identified conflicts of interests and confirmed that funders take influence on the substantive and procedural decisions of the funded parties, including settlements and appeals. The study does not result in a final recommendation to the Commission, but explains the options and consequences of ‘no regulation’, ‘strong regulation’, or a ‘light-touch regulation’. According to a statement of the Commissioner for Justice, *Michael McGrath*, from December 2025, the Commissions does not see a need for legislative activities at the moment.⁶¹

VII. ELI PRINCIPLES GOVERNING THE THIRD-PARTY FUNDING OF LITIGATION 2024

Finally, another initiative in the field of TPF is worth being mentioned. A working group established by the European Law Institute developed principles for TPF.⁶² The group started with the assumption that there are always mutual benefits for the funder and the funded party and it addressed primarily points of common concern. The soft law approach taken by ELI resulted in 12 key principles on the conduct of funders and funded parties regarding the following issues: facilitating and increasing access to justice, identifying and meeting valid concerns about TPF, levelling the playing field internationally between parties, and providing aid to courts, administrative

⁵⁹ B. Gsell/C. Meller-Hannich/A. Stadler, *Prozessfinanzierung in Deutschland vor dem Hintergrund europäischer Regelungsiniziativen*, Juristenzeitung (JZ), 989 at 997-999 (2023). However, the Federal High Court recently decided in favour of a more or less full disclosure of a funding agreement, see Federal High Court, 12 May 2026, KZR 6/24, GRUR-RS 2026, 10222 n. 81-82.

⁶⁰ The study is available at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/civil-and-commercial-law/third-party-litigation-funding-tplf_en (last visited 18 February 2026).

⁶¹ <https://www.kennedyslaw.com/en/thought-leadership/article/2025/third-party-litigation-funding-an-ongoing-divergence-in-approach-between-the-eu-and-uk/> (last visited 18 February 2026).

⁶² https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_Governing_the_Third_Party_Funding_of_Litigation.pdf (last visited 18 February 2026).

bodies, legislators and funders.⁶³ Of course, such principles are sometimes vaguely formulated and do not have the regulatory character and density that the European Parliament envisaged for a directive. They are closer to the self-regulation by codes of conduct that are in place for some associations of funders.⁶⁴ The working group itself considers the Principles to offer an alternative to codes of conduct and prescriptive regulation.⁶⁵

VIII. CONCLUSION

The possibilities for commercial funders to support representative actions under the RAD currently vary greatly across the EU.⁶⁶ Case law sometimes reveals a certain restrictive tendency. However, consumer organizations and, above all, ad hoc founded qualified entities are dependent on access to TPF. At present, no significant abuse, which is often attributed to TPF, has come to light. It therefore appears that the safeguards provided for in the RAD are sufficient. Whenever Member States go beyond this and establish stricter rules, they must be aware that this can significantly restrict access to justice in cases of mass damage. A uniform Europe-wide regulation is not necessary at present, and if the Commission were to consider it maybe in the future, the European Parliament's proposals would have to be carefully examined in detail and brought back to a more balanced level.

⁶³ ELI Principles Governing the Third-Party Funding of Litigation, Vienna 2024, p. 11.

⁶⁴ European Litigation Funders Association, Code of Conduct 29 June 2022: <https://elfassociation.eu/about/code-of-conduct> (last visited 18 February 2026); ALF- Association of Litigation Funders of England and Wales, Code of Conduct 2011: <https://associationoflitigationfunders.com/code-of-conduct/> (last visited 18 February 2026).

⁶⁵ ELI Principles Governing the Third-Party Funding of Litigation, Vienna 2024, p. 11.

⁶⁶ For details see the national reports part in the BIICL study.

