

Stakeholder Survey on Third Party Litigation Funding in the European Union

This survey is conducted by Civic Consulting and BIICL in the framework of a study on **Mapping Third Party Litigation Funding in the European Union**. The output from the study will assist the European Commission to analyse information on the legal framework and practical operation of TPLF in the European Union to facilitate a future policy choice of the Commission in this field.

When answering to the questions, please consider the following clarifications:

- The term 'Third Party Litigation Funding (TPLF)' refers to the funding of dispute costs by a third party in exchange for a share of the financial recovery, if the case is won.
- The term 'Portfolio Litigation Funding (PLF)' refers to the (professional practice of) funding of dispute costs for a number of disputes arranged together in a portfolio. A portfolio arrangement can be structured in many ways, but there are two major types of arrangements: (1) finance structured around a law firm, or department within a law firm, where the claim holders may be various clients of the firm; or (2) finance structured around a corporate claim holder or other entity, which is likely to be involved in multiple legal disputes over a relatively short period of time. Structuring finance around multiple claims under either model usually involves some form of cross-collateralization, meaning that the funder's return is dependent upon the overall net financial performance of the portfolio as opposed to the outcome of each particular claim.
- The term 'Third Party Litigation Funder' (or 'Third Party Funder', 'Litigation Financier', 'Litigation Funder', 'Litigation Fund' or 'Funder') indicates any entity that is not a party to a dispute, or which is a lawyer or insurer of such a party, which bears the costs of the dispute in exchange for a share of the financial recovery, only if the case is won.
- A reference in this questionnaire to 'cases in the EU' refers to cases litigated before EU courts.

Please note that for the scope of the study, all forms of TPLF are considered, including TPLF in the form of assignment of claims, and mass consumer claims. However, the funding of individual consumer claims (micro claims) that are not of a mass character are not covered.

*This survey will be open until **3 September 2024**. For questions about the survey, or if you are interested to share your practical experiences with TPLF in the EU in an interview with the study team, please email Dr*

Senda Kara at ec-survey@civic-consulting.de.

If you have already completed this questionnaire in the framework of an interview of our country research team, you do not need to complete this survey again.

Here you can download a letter of recommendation by the European Commission:

[Recommendation_letter_TPLF.pdf](#)

I. Your profile

1. Please identify yourself

Do you request anonymity for your answer to this survey?

- Yes (your name and affiliation will not be disclosed)
 No

Name:

Priya Nair

Position:

Senior IP Policy Counsel

Name of organisation:

ACT | The App Association

Email address:

pnair@actonline.org

Main country(ies) of operation:

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece

Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
The Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
The United Kingdom
Switzerland
Norway
Canada
The United States
Other (please specify below)

If 'Other', please specify:

2. Are you a:

- Litigation funder or their organisation
- Business (other than law firm and litigation funder) or their EU/national association
- Consumer organisation and other organisations representing consumers or citizens in collective actions
- Lawyer / law firm, or organisation representing them
- Public authority (including authorities representing claimants or potential claimants)
- Member of the judiciary (judge, prosecutor) or organisation representing them

- Arbitrator, mediator or organisation representing them
- Academic/researcher
- Other (*please specify*)

If 'Other', please specify:

3. Have you or your members been involved in a case where TPLF was used in the EU?

- Yes, as claimant in a case where TPLF was used in the EU
- Yes, representing a claimant in a case where TPLF was used in the EU
- Yes, as defendant in a case where TPLF was used in the EU
- Yes, representing a defendant in a case where TPLF was used in the EU
- Yes, as judge or prosecutor in a case where TPLF was used in the EU
- Yes, as litigation funder, funding cases in the EU
- Yes, both as claimant and defendant in cases where TPLF was used in the EU
- Yes, otherwise involved in cases where TPLF was used in the EU (*specify below*)
- No, so far not involved in cases where TPLF was used in the EU

If 'Yes, otherwise involved', please specify:

If yes to 3., you can give more information in your precise capacity here:

App Association members are small and medium-sized technology companies that are often easy targets of bad faith litigation due to the minimal resources they have to investigate or fight frivolous claims. Bad actors are often non-practising entities (NPEs), known as patent trolls, that have built a business model from monetizing potential weak, invalid, or unused patents, crippling innovation in critical spaces. Patent trolls initiate a majority of the abusive and unjustifiable patent infringement suits. If a patent troll succeeds in an infringement suit, most small innovators cannot afford to seek an appeal even if they believe the court has made a mistake. In multiple jurisdictions, it has been revealed that this business model is largely sustainable through third-party litigation funding (TPLF) by unnamed investors hidden through shell corporations or wealth funds that have a real interest in the outcome of litigation.

If yes to 3., does your experience with TPLF relate to:

- Litigation cases
- Arbitration cases
- Both litigation and arbitration cases
- Other (*please specify*)

Comments / or specify if 'other':

If yes to 3., please select the areas in which you or your members have been involved in case(s) where TPLF was used in the EU:

- Civil law
- Commercial law
- Competition/Antitrust
- Consumer Protection
- Passenger Rights
- Financial Services
- Artificial Intelligence
- Employment / Industrial relations
- Data protection
- Equality/non-discrimination
- Business and Human rights
- Health
- Product liability
- Business/enterprise
- Personal injury
- Intellectual property (including patent litigation)
- Insolvency
- Environment
- Other

If 'Other', please specify:

II. Questions to all stakeholders except litigation funders and their organisations

Litigation funders and their organisations please continue with section III below (question 5)

4.1. Are you aware of litigation funders operating in your jurisdiction (indicated under question 1 above)? (EU level organisations answer for EU)

- Yes
- No
- Don't know

4.2. If yes to 4.1, please indicate their names:

4.3. If yes to 4.1, please estimate the average number of cases funded by TPLF per year in your jurisdiction in the last 3 years (EU level

organisations answer for EU):

	Average number of cases funded by TPLF per year in your jurisdiction in the last 3 years
Total (both litigation and arbitration cases) per year:	Uncertain, but likely hundreds of cases, and mainly attached to patent litigation
Of which arbitration cases:	Unknown due to the confidential nature of arbitrations
Comments:	

4.4 If yes to 4.1, are you aware of the following details regarding funding practices by litigation funders in your jurisdiction? (please provide your best estimate):

(EU level organisations answer for EU)

a. Types of cases typically funded:

patent litigation

b. Minimum claim value in absolute terms (in million Euro):

Don't know

c. Typical claim value in absolute terms (in million Euro):

Don't know

d. Typical ratio between investment by the funder and claim value:

1:2

e. Typical size of the investment by the litigation funder (in million Euro):

10-14

Comments:

f. Origin of funding provided by the litigation funder:

Unknown

g. Share of compensation awarded typically demanded by litigation funders:

40%

Comments:

h. Other conditions of the litigation funding agreement:

Generally not disclosed

i. According to your information, do litigation funders have an acceptable threshold for probability of success / acceptable level of risk? (in percentage)

- Yes
 No

Don't know

Please specify:

j. Do you have any information on the Multiple-on-Capital (MoC) and Annualized Internal Rate of Return (IRR) of funders?

- Yes
 No

If yes, please specify:

k. What were the outcomes of funded cases, including the effective gains for beneficiaries and funder?

The outcome is often the funded company succeeding in their case due to additional resources and, as a result, an uptick in funded litigation, particularly for patent holders that may have a better chance at defending potentially weak patents in patent-friendly jurisdictions against smaller entities.

l. Are funding agreements disclosed to the court? Please specify the extent of disclosure.

- Yes
 No
 Don't know

If yes, please specify the extent of disclosure:

m. When funding a dispute, would you say litigation funders exercise any form of control over the legal proceedings?

- Yes
 No

If yes, please indicate what type of control:

- Choice of lawyer
 Consent for settlement
 Consent for appeal
 Consent for expert evidence
 Agreement on strategy
 Other

If 'Other', please specify:

Litigation funders open up their fundees to a wide range of resources to support their case, which they would not otherwise have. While this service can support good faith startup and small innovators secure legal and

other expert resources, it is often offered to entities with a high success rate in litigation around a potentially weak claims.

n. How would you describe the relationship of the litigation funder with the plaintiff's lawyers?

Legally, the funder should not have a direct relationship with the supporting lawyers, however we cannot be certain that this is the case. Regardless, and certainly, litigation funders are, in some way, supporting the services of the lawyer.

o. When funding a dispute, is it possible for the litigation funder to withdraw funding during the litigation process?

- Yes
- No
- Don't know

If yes, for what reasons?

p. According to your information, do litigation funders have any safeguards in place to avoid conflicts of interest?

- Yes
- No
- Don't know

Please specify:

q. According to your information, does the funding agreement typically cover the issue of liability as to costs in the event of an unsuccessful outcome ("adverse costs")?

- Yes
- No
- Don't know

If yes, is it:

- Limited liability
- Conditional liability
- No liability

Comments:

r. According to your information, do litigation cost agreements usually include the requirement for After the Event (ATE) insurance?

- Yes
- No
- Don't know

Please specify:

s. Are there any examples of a funding agreement used by litigations funders publicly available?

- Yes
- No

If yes, could you please provide a copy:

III. Questions to litigation funders and their organisations

All other stakeholders please continue with section IV below (question 9)

5. Please indicate the average number of cases you were involved as funder per year in the last 3 years in the EU Member States:

	Average number of cases:
Total (both litigation and arbitration cases) per year:	
Of which arbitration cases:	
Please provide examples of cases in which you were involved as funder:	

6. Do you utilise portfolio TPLF?

- Yes
- No

If yes, please explain the reason for this choice and the way it operates:

7. Could you please provide the following details regarding typical funding practices of litigation funders active in the EU?

- *EU level organisations answer for EU*

a. Types of cases typically funded:

b. Minimum claim value in absolute terms (in million Euro):

- <1
- 1-1.9
- 2-4
- 5-9
- 10-14
- 15-19
- 20-29
- 30-39
- 40-50
- More
- Don't know

c. Typical claim value in absolute terms (in million Euro):

- <1
- 1-1.9
- 2-4
- 5-9
- 10-14
- 15-19
- 20-29
- 30-39
- 40-49
- 50-99
- 100-299
- 300 or more
- Don't know

d. Typical ratio between investment by the funder and claim value:

- 1:2
- 1:5
- 1:10
- 1:15
- 1:20
- More than 1:20
- Don't know

e. Typical size of the investment by the litigation funder (in million Euro):

- <1
- 1-1.9
- 2-4
- 5-9
- 10-14
- 15-19
- 20-29
- 30-39
- 40-50
- More
- Don't know

Comments:

f. Origin of funding provided by the litigation funder:

g. Share of compensation awarded typically demanded by litigation funders:

- 10%
- 20%
- 30%
- 40%
- 50%
- 60%
- 70% or more
- Don't know

Comments:

h. Other conditions of the litigation funding agreement:

8. [Only litigation funders themselves] Could you please provide the following details regarding your operations in the EU?

- *Your answers to this question are considered to be confidential and will only be presented anonymously*

a. What type of cases do you usually get involved with? Statistics? On what criteria do you choose the disputes you get involved with?

b. Minimum claim value in absolute terms (in million Euro):

- <1
- 1-1.9
- 2-4
- 5-9
- 10-14
- 15-19
- 20-29
- 30-39
- 40-50
- More
- Don't know

c. Typical claim value in absolute terms (in million Euro):

- <1
- 1-1.9
- 2-4
- 5-9
- 10-14
- 15-19
- 20-29
- 30-39
- 40-49
- 50-99
- 100-299
- 300 or more
- Don't know

d. Typical ratio between investment by the funder and claim value:

- 1:2
- 1:5
- 1:10
- 1:15
- 1:20
- More than 1:20
-

Don't know

e. Typical size of the investment by the litigation funder (in million Euro):

- <1
- 1-1.9
- 2-4
- 5-9
- 10-14
- 15-19
- 20-29
- 30-39
- 40-50
- More
- Don't know

Comments:

f. Origin of funding provided by the litigation funder:

g. Share of compensation awarded typically demanded by you:

- 10%
- 20%
- 30%
- 40%
- 50%
- 60%
- 70% or more
- Don't know

Comments:

h. Other conditions of the litigation funding agreement:

i. Do you have an acceptable threshold for probability of success / acceptable level of risk? (in percentage)

- Yes
- No

Please specify:

j. Multiple-on-Capital (MoC) and Annualized Internal Rate of Return (IRR):

k. What were the outcomes of funded cases, including the effective gains for beneficiaries and funder?

l. Are funding agreements disclosed to the court? Please specify the extent of disclosure.

- Yes
- No

If yes, please specify the extent of disclosure:

m. When funding a dispute, would you say you exercise any form of control over the legal proceedings?

- Yes
- No

If yes, please indicate what type of control:

- Choice of lawyer
- Consent for settlement
- Consent for appeal
- Consent for expert evidence
- Agreement on strategy
- Other

If 'Other', please specify:

n. Could you describe your relationship with the plaintiff's lawyers?

o. When funding a dispute, is it possible to withdraw funding during the litigation process?

- Yes
- No

If yes, for what reasons?

p. Do you have any safeguards in place to avoid conflicts of interest?

- Yes
- No

Please specify:

q. Does the funding agreement cover the issue of liability as to costs in the event of an unsuccessful outcome (“adverse costs”)?

- Yes
- No

If yes, is it:

- Limited liability
- Conditional liability
- No liability

Comments:

r. Do litigation cost agreements usually include the requirement for After the Event (ATE) insurance?

- Yes
- No

Please specify:

s. Would you be willing to share a template of a funding agreement you use?

- Yes
- No

If yes, could you please provide a copy:

IV. Questions to all stakeholders

9. Is there existing legislation on TPLF in your jurisdiction?

- Yes
- No

If yes, is it regularly relied upon and in what type of cases?

If no, is there a planned legislation on TPLF in your jurisdiction?

There are no planned laws addressing TPLF across EU Member States that App Association members are headquartered and/or operate in that we are aware of.

10a. Have you observed positive or negative effects of the current practice of TPLF in the EU?

- Positive effects of TPLF
- Negative effects of TPLF
- Both positive and negative effects of TPLF
- No positive or negative effects
- Don't know

10b. If positive effects indicated: Please indicate the positive effects of the current practice of TPLF in the EU you have observed:

- Better access to court procedures for parties that could not fund litigation otherwise
- Deterrence effect on companies that serve consumer markets due to the increased likelihood of mass claims related to e.g. the use of unfair practices or marketing of unsafe products and services
- Filtering effect, as cases with a low chance of success will not be funded
- Professionalisation and expertise for complex cases provided by the funder
- Infrastructure and tools provided by the funder (e.g. digital tools for collecting complaints)
- Other positive effect (please specify below)

Please describe the observed positive effects of TPLF, and provide details in terms of the relevant cases:

10c. If negative effects indicated: Please indicate the negative effects of the current practice of TPLF in the EU you have observed:

- Conflicts of interest involving litigation funding
- Undue influence on the substantive and procedural decisions of the funded beneficiaries, including on settlements and appeals
- Funding of frivolous claims with the aim of reaching an extorted settlement, or other forms of abuse
- Funding aimed at obtaining confidential information from the defendant through court ordered disclosure of evidence
- Reduction of compensation for the claimant
- Extension of the duration of proceedings
- Other negative effects (please specify below)

Please describe the observed negative effects/forms of abuse, and provide details in terms of the relevant cases:

The App Association has a growing concern with TPLF used as a mechanism to abuse patent process in the European Union (EU) and internationally against EU companies. TPLF can have several negative effects on innovators, including small and medium-sized enterprises (SMEs), such as our member companies. Our main concern is the potential increase in litigation risks and the weaponization of courts across the EU. TPLF can encourage more aggressive legal actions (including lawsuits filed in bad faith) as funders might pursue cases not based on their merits but on the potential financial return. This can lead to SMEs facing prolonged legal battles, increased legal costs, which creates the most negative effects and risks for smaller businesses. SMEs often have limited financial and legal resources, which makes them less prepared to defend against

being targeted by well-funded lawsuits. SMEs who may feel unprepared to go through such lengthy and aggressive procedures may feel the pressure to settle even meritless claims to avoid the financial and reputational damage of ongoing litigation.

NPEs initiate a majority of the abusive and frivolous patent infringement suits and many NPE suits are financially backed by unnamed TPLF investors hidden through shell corporations or wealth funds that may have a real interest in the outcome of litigation. TPLF has affected critical EU technology industries, including telecommunication, automotives, and semiconductors. Funders may be individual entities seeking economic gain or competing countries strategically undermining essential EU industries and EU national security. The serious harms to the EU market evidenced by TPLF will undermine equity for EU businesses, workers, and consumers. We urge the EC to consider all potential motivations of TPLF and how to address its abusive presence in the EU intellectual property (IP) system and in IP systems around the world that are utilized by EU companies. The availability of anonymous investment sources enables bad actors to flood adjudicating bodies with potentially illegitimate claims. Therefore, the presence of high levels of undisclosed TPLF in markets can encourage bad actions, that stifle innovation, deter investment, and impose significant operational and financial burdens on SMEs.

The inception of the Unified Patent Court (UPC) in Europe is escalating this issue by allowing abusers to engage in multi-jurisdictional litigation and collect significant damages from European companies that allegedly infringe on European patents. Under this system, European patent holders can choose to designate their issued patents as a Unitary Patent (UP), which is recognized in all member states participating in the UPC, or a classic European Patent (EP). EPs can designate specific member states to have jurisdiction over the validity of their patent. If a holder of an EP does not want the UPC to have jurisdiction over their patent, the patent can be opted-out of the UPC's jurisdiction prior to receiving an enforcement action. TPLF entities have admitted that the UPC is venue that they seek to make a financial hub for patent litigation. The UPC's approach to evaluating patent enforcement claims will give us guidance on whether NPEs and opportunistic practising entities will be able to bolster their strategies more effectively in the European Union. If these strategies are successful, businesses around the world that engage with the EU's economy may be significantly crippled.

The European Commission (EC) should examine the motivations of individual entities and competing economies to permit TPLF and adopt the following proposals endorsed by the European Parliament Legal Affairs (JURI) Committee: disclosure and review of funding agreements by the court, registration of funders in the EU, a cap on fees, a requirement for claimants to be paid first, a fiduciary duty of care for funders, an obligation for funders to see a case through to the end, a capital adequacy requirement, and joint liability for adverse costs.

The EC should similarly encourage affected foreign jurisdictions to adopt the same or similar requirements to ensure full transparency and fairness in global IP litigation proceedings.

11. Would you say other instruments, such as legal aid, public fund, philanthropic funding, crowdfunding, or legal cost insurance, can be as effective as TPLF to facilitate access to justice?

- Yes
- No
- Don't know

Please explain, indicating the instrument you are referring to:

The suggested alternative methods can be just as effective as TPLF in facilitating access to justice, particularly for SMEs. These approaches often focus on supporting cases with genuine merit that are very often non-commercial, aiming to achieve fair and just outcomes rather than being driven by the profit motives as is the case with TPLF.

12. Are success/contingency fees allowed for lawyers in your jurisdiction?

- Yes
- No
- Don't know

Comments:

In most cases, legal fees cannot be solely dependent on the outcome of a case; however conditional fee arrangements, where the fee may increase based on the success of the case (success fees), are permitted as long as there is a base fee involved.

13. Would you say extrajudicial procedures such as ADR/ODR, a public Ombudsman, a private Ombudsman or grievance systems managed by companies, can be as effective as (or more effective than) litigation supported by TPLF to seek redress?

- Yes
- No
- Don't know

Would you say they could result in faster and more adequate compensation for claimants?

- Yes
- No
- Don't know

Please explain:

While sometimes extrajudicial procedures can be as effective as litigation, each has certain positive and negative attributes that will be well (or ill-) suited to the dispute at hand (e.g., ADR is very often restricted under confidential procedures that are minimally evaluated for abuse and may therefore facilitate harmful TPLF). These alternatives should not be viewed as substitutes for a party's ability to seek redress in a court, and should be employed only when mutually agreed by the parties.

14. Do you have indications that the use of TPLF in your jurisdiction has led to economic impacts (e.g. on costs of litigation, increasing costs of legal insurance etc)?

- *EU level organisations answer for EU*
- Yes
- No
- Don't know

15. Do you see a need for a regulation of TPLF at national or EU level?

- Yes at national level

- Yes at EU level
- Yes both
- No
- Don't know

Please explain:

The EU should harmonise the Union's approach to avoiding harmful and abusive TPLF by establishing clear guidelines that take key steps including disclosure and review of funding agreements by the court, registration of funders in the EU, a cap on fees, a requirement for claimants to be paid first, a fiduciary duty of care for funders, an obligation for funders to see a case through to the end, a capital adequacy requirement, and joint liability for adverse costs. Such measures have already been recommended by the European Parliament Legal Affairs (JURI) Committee.

EU-level regulation would provide a balanced framework that encourages access to justice without stifling legitimate claims or innovation, and it would mitigate the risks associated with unregulated harmful TPLF, such as conflicts of interest and lack of transparency. Guidelines on TPFL would not only protect claimants and defendants but also support a fair and trustworthy legal environment, essential for maintaining a positive investment climate and advancing the EU's 'Justice for Growth' strategy.

Creating consistent regulations at the EU level, rather than leaving it to individual member states, leads to efficient harmonisation across the region, avoiding a patchwork of national rules which contribute to increased transaction costs, particularly for small businesses.

16. What is your view regarding the effectiveness of the measures in the [proposal for a directive annexed to the EP resolution](#)[1] to address potential undesired features of current practices of TPLF, if any?[2]

Please assess the measures included in the proposal for a directive annexed to the EP resolution:[3]

	Not at all effective	Rather not effective	Rather effective	Very effective
Authorisation system (Art. 4) and conditions for authorization (Art. 5)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Capital adequacy (Art.6)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Fiduciary duty (Art.7)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Powers of supervisory authorities (Art.8)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Investigations and complaints (Art.9)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Coordination between supervisory authorities (Art. 10)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Content of third-party funding agreements (Art.12)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Transparency requirements and avoidance of conflicts of interest (Art.13)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Invalid agreements and clauses (Art.14)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Termination of third-party funding agreements (Art. 15)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Disclosure of the third-party funding agreement (Art. 16)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Review of third-party funding agreements by courts or administrative authorities (Art.17)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Responsibility for adverse costs (Art.18)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Sanctions (Art.19)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Comments:

[1] Responsible private funding of litigation European Parliament resolution of 13 September 2022 with recommendations to the Commission on Responsible private funding of litigation (2020/2130(INL) and Annex: Proposal for a Directive of the European Parliament and of the Council on the regulation of third-party litigation funding.

[2] For an overview of potential negative effects/undesired features of TPLF (if any) see question 10c above. An effective measure to address them would prevent these negative effects as indicated in your answer to 10c to materialise.

17. Would you suggest any other potential measure that you consider to be effective:

The European Parliament's proposal on TPLF regulation is a promising starting point for the Commission to build upon. The proposed general protections can create more certainty and safeguard businesses, particularly SMEs, across Europe. By implementing these EU-wide standards, the proposal helps ensure a fairer legal environment, fostering trust and stability that are crucial for the growth and protection of European enterprises. We recommend that the Commission consider strengthening measures around transparency and disclosures to avoid harmful and abusive TPLF by adopting requirements for, among other measures, disclosure and review of funding agreements by the court, registration of funders in the EU, a cap on fees, a requirement for claimants to be paid first, a fiduciary duty of care for funders, an obligation for funders to see a case through to the end, a capital adequacy requirement, and joint liability for adverse costs.

18. Please provide any other comment that you have:

There are many scenarios where undisclosed TPLF can support anticompetitive tactics, particularly for patent litigants. For examples, where patent holders that voluntarily contribute their patent to a technical standard (e.g. WiFi, 5G, video/audio codecs, etc.) take a commitment to license their patent, known as a standard essential patent (SEP), on fair, reasonable, and non-discriminatory (FRAND) terms, TPLF can further exacerbate the anticompetitive effects of SEP licensing abuses (which are being addressed in numerous ways through the EC's SEP Regulation, currently before the Council). Decades of SEP licensing has shown that some SEP holders abuse the ambiguities in the meaning of FRAND to impose unreasonable licenses with excessive royalty rates against a national injunction. NPEs, or patent trolls, are no stranger to this landscape, and are known to participate in these abusive tactics with the support of undisclosed TPLF entities. The ability for bad actors to use TPLF in secret can reveal the imbalance of power in a litigation,

arbitration, and negotiation scenarios, particularly with regards to smaller entities. We support the Parliament's proposal for a directive, and encourage strengthening this proposal through mandatory disclosure and transparency requirements for those supported by TPLF.

Contact

ec-survey@civic-consulting.de