



Brussels, 06/05/2022

Statement of Legal Protection International aisbl on the 17 June 2021 [draft report](#)
of the European Parliament Committee on Legal Affairs regarding third-party
litigation funding

Third-party litigation funding is fairly new in Europe and its potential to disturb existing litigation arrangements and vitalise claims that formerly would not have been pursued is clear. At the same time, third-party litigation funding provides the money injured claimants need to pursue their rights and often is the only way for them to get access to justice.

Consequently, in the view of Legal Protection International aisbl (LPI), regulation must not stop this innovation in its track but must implement safeguards, similar to those in the area of insurance, which allows funders to assume the financial risk of litigation and protect the interests of injured claimants. The recommendations tabled by the European Parliament Committee on Legal Affairs appear to be in parts too restrictive. LPI therefore requests the EU Commission to launch a proper consultation with all stakeholders to develop a balanced set of rules.

Legal Insurance and Third-Party Litigation Funding – Similarities

Both, (legal protection) insurance and private litigation funding, are tools to facilitate access to justice for claimants as well as defendants. Ultimately, in order to defend or pursue a right, insurers and funders transfer risks associated with civil litigation, provide parties with funds they would otherwise lack and sometimes constitute the only chance for claimants to access justice in the first place.

While insurers have assumed these kinds of risks for over a century, third-party litigation funders are fairly new. Their products and business models are still evolving while working around and arranging with legal and factual impediments. The potential for conflicts between or among claimants, funders, and claimants' attorneys must be admitted, but similar conflict-related concerns exist on the insurance side and the legality of shifting the financial responsibility is broadly accepted while it warrants prudent regulation to ensure the functioning of either tool.

Legal Insurance and Third-Party Litigation Funding – Discrepancies

Insurers and funders differ in terms of their functions, the way they finance themselves and how they engage in the legal procedures.

Against the payment of a premium, legal protection insurance bears the costs of legal proceedings and provides the services necessary to get compensation for a loss, damage, injury or to defend or represent the insured person in respect of any claim.



Liability insurance indemnifies a policyholder against a liability claim, including defence arrangements and litigation costs. The insurer invests the premiums.

As compensation, third-party litigation funders get a share in a risk that may or may not pay off. Typically, the funder's return is tied to the value added, the level of risk incurred and/ or the complexity of the case.

Insurers and funders both encounter adverse selection and moral-hazard problems. Insurers use the underwriting process to weed out bad risks and policy limits to restrict their exposure to them. Funders use case evaluations, limits on investment size, and sometimes claimants' attorneys' willingness to handle claims on contingency to do the same.

Moreover, funders often depend on insurance cover to mitigate the risks of paying for adverse costs.

Third-Party Litigation Funding – Regulation

Presently, third-party litigation funding is not regulated in the EU. Only the EU Directive on Representative Actions for the Protection of the Collective Interests of Consumers [(EU) 2020/1828] lays down some safeguards in the context of representative actions on behalf of consumers.

As new kid on the block and given the changes third-party litigation funders may impel, the controversy around it is predictable. Accordingly, in June 2021, the Committee on Legal Affairs of the European Parliament (JURI), ushered the European Parliament to compel the European Commission to submit a proposal for a directive to regulate third-party litigation funding in the EU.

From the perspective of legal protection insurance, a highly regulated field of insurance, third-party litigation funding is an innovation which affects existing working arrangements, the way legal services are delivered and civil litigation is conducted. In many cases, injured claimants need the money third-party funders provide and, in the view of LPI, regulation must not stop this innovation in its track. Therefore, a legal framework could be used to create a level playing field for providers in this field and it must safeguard the interests of the most vulnerable, the claimant. The key points appear to be to ensure that

- conflicts of interest are avoided (e.g. between and amongst funder, claimant and claimant's attorney; between funder, his competitor and a defendant on whom the funder is dependent on);
- funders do not unduly influence the conduct of proceedings or settlement negotiations;
- funders fulfil certain liquidity and capital requirement to meet their financial obligations to fund litigation.

Legal Protection International aisbl (LPI): unites legal protection insurers and service providers in this area from Europe, Africa, the Americas and Japan. Our members are dedicated to improving access to justice and are convinced that everybody deserves a good legal protection which can change one's life for the better. Since legal protection insurance is abstract, complex and not well known around the world, LPI wants to raise awareness and share relevant information and best practices to improve the quality of legal protection worldwide.