

A Call for European Courts to Get Back On Track - Litigation Funding and Justice System Reform

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- As European institutions consider new regulations for litigation funding, broader questions emerge about the health of the continent's justice systems. [Charles Demoulin](#), Chief Investment Officer at [international litigation funder Deminor](#), offers his perspective on these interconnected challenges.

Drawing from the recent EU mapping study, Demoulin discusses the relationship between third-party funding and court efficiency, whilst exploring underlying structural issues affecting European courts. He calls for a coalition approach: bringing together judges, lawyers, NGOs, and businesses to tackle what he views as the true threat to democratic access to justice.

Article highlights:

- Insights from the European Commission's mapping study
- The role of various stakeholders in system improvements
- A roadmap for reform beyond regulatory restrictions

"An efficient justice system is a prerequisite for democracy" – but what happens when the racetrack itself is full of potholes?

--- Read the full article below ---



The graphic is a vertical rectangular panel. At the top, it features the CJEU logo (scales of justice with 'CVRIA' below it) and the text 'COUR DE JUSTICE DE L'UNION EUROPÉENNE' in gold. To the right is a circular portrait of Charles Demoulin. In the top right corner, the 'deminor LITIGATION FUNDING' logo is visible. Below the portrait, the text 'DEMINOR INSIGHTS: European | Policy & Courts' is displayed. The main title 'LITIGATION FUNDING AND JUSTICE SYSTEM REFORM' is in large, bold, white letters. Below it, 'In Conversation: Charles Demoulin, Chief Investment Officer' is written in smaller white text. At the bottom, a grey banner contains the text 'In Conversation: Charles Demoulin on Litigation Funding and Justice System Reform'.

DEMINOR INSIGHTS:
European | Policy & Courts

**LITIGATION FUNDING
AND JUSTICE SYSTEM REFORM**

In Conversation: Charles Demoulin, Chief Investment Officer

In Conversation: Charles Demoulin on Litigation Funding and Justice System Reform

While some groups of interest want to impose restrictions on litigation funding, Deminor's Chief Investment Officer argues the focus should be on deeper structural problems plaguing the continent's courts.

Lobby groups are pushing European and national institutions to limit third-party financing of legal claims. Critics often argue that funders contribute to court inefficiencies and encourage frivolous litigation, whilst supporters contend that funding improves access to justice.

Charles Demoulin, Chief Investment Officer at Deminor Litigation Funding, argues that the real cause of the crisis lies with fundamental underfunding of Europe's court systems. Rather than restricting litigation funding, he says policymakers should focus on ensuring courts have adequate resources to function effectively.

In this article, Charles challenges assumptions about litigation funding's impact on justice systems and calls for a coalition approach to address what he sees as more pressing structural problems in European courts.

There's an ongoing discussion about whether we should regulate litigation funding or not. We've seen, particularly in Europe, that certain lobby groups have been pushing for regulation. They essentially aim to limit or restrict access to litigation funding.

Whilst reviewing the recent report that concluded the mapping study commissioned by the European Commission, I found it interesting to note that an English judge was dismissing the idea that frivolous claims are funded (see page 670 of the report). The report also highlighted that there does not seem to be empirical data demonstrating that litigation funding increases the number of unmeritorious claims (page 52). For litigation funders, this is obvious and pure common sense.

Nevertheless, some market players (primarily those being confronted with funded collective actions) want to focus on the question: Shouldn't we make it more difficult for litigation funders to provide funding for claims?

I find it particularly striking that people are considering restricting access to litigation funding, which actually promotes access to justice. I believe this is a distraction from something more essential: how can we ensure that justice remains a public service, accessible to all citizens (private individuals and legal entities), whether or not they use litigation funding, and how do we guarantee them a right to an effective remedy and a fair trial (art. 47 of the Charter of Fundamental Rights)? Not only on paper, but in everyday reality.

From my own point of view, the article in the Financial Times about "Broken Justice: how Europe let its courts decay" highlighted that there's a much more fundamental and urgent issue at play, and that is justice itself.

An efficient justice system is a prerequisite for democracy.

You see that certain business interests want our institutions to focus on funders, whilst actually the most essential issue to deal with right now is: how do we ensure that there is enough money for justice?

Litigation funding is sometimes framed as making the situation worse. But when you look at the figures and analysis in the FT article, they're not saying that the backlog or the time it takes to handle claims is due to litigation funding. What they're actually saying is that the inefficiencies are due to a lack of public funding.

Not many people will actually be confronted with the justice system in their lives. But just because only a minority of citizens might experience it firsthand doesn't mean it shouldn't be a priority in our society. As citizens, knowing that you can go to court and that there's a functioning justice system making it possible for you to defend your rights, that alone is reassuring.

Those who are often or regularly defendants in litigation might not see an efficient judiciary as being in their best interest or as a business priority. What strikes me is that the same people might also include individuals who don't look favourably on litigation funding being easily available.

However, I still believe (even though I may be naïve) that everyone, whether they are plaintiffs or defendants, whether or not they are likely to be confronted one day with litigation, must agree that we need an efficient justice system. It is a pillar of democracy. That message should come from all sides, not just from those typically standing on the plaintiff's side and less so from the defendant's side.

Another aspect to consider is the attitude of the parties involved in litigation. You can't have an efficient justice system if someone isn't allowed to defend against a claim. That is a cornerstone of democracy.

While those opposed to litigation funding use the argument of certain plaintiffs abusing their right to bring claims (which remains exceptional) and pretend that litigation funding would encourage this, we rather see defendants using tactics that cause excessive and unnecessary delays which further increase the costs of litigation, create backlogs and undermine the whole justice system.

Because the right to defend oneself is, and must remain, a fundamental right, courts feel compelled to provide time and opportunity for that defence. However, no matter how fundamental a right is, it cannot be abused in a way that harms others' equally fundamental rights. There's a difference between genuinely defending yourself and raising every possible defence just to buy time and wear people down.

Courts and judges should have the possibility to counter or limit this systematic use of litigation strategies that rely on dragging out the process to exhaust the other party's resources, including time, with the hope that the claim will eventually be abandoned or settled for a low amount.

The right to a fair trial is not only about having access to court; it's also about ensuring that the court hears your matter as efficiently as possible, within a reasonable timeframe.

Time, as we all know, is critical. For clients, for people going to court, time is essential. In many cases, the delay is not just an inconvenience; there can be dramatic, even unbearable, consequences, particularly from a human perspective.

But it's also crucial financially. And this is just as true for litigation funders. Of course, the merits of the case matter. But time (the duration of the proceedings) is a major factor in any funding decision.

This is an area where solutions do not only require financial investment, but also a discussion amongst legal practitioners and courts to come up with practical and legal solutions. How can we collectively prevent the justice system from being held hostage by practices and tactics that are undermining its functioning and draining its scarce (financial) resources?

One thing is clear, though: litigation funding is not contributing to the distraction of resources, the accumulation of unmeritorious claims or the protraction of litigation. Quite the contrary. Funders have no interest in financing bad claims due to the risk they represent, nor in delaying resolution as it only postpones their return on investment. Just like businesses have no interest in spending their own resources on bad and loss-making projects and ventures.

Well, it won't be the responsibility of just one group. This really needs to be a shared effort. If various groups can support common proposals, it will be much easier to convince the public institutions, starting with the governments and legislators, to take action, to adopt the required measures and to allocate the financial resources to implement them.

Lawyers are most probably amongst the most obvious candidates to support and advocate for change.

There's definitely a place for consumer organisations whose focus tends to be primarily – but not only – on consumer-related claims.

What about corporates? They could be involved, especially in the context of commercial litigation. Their position will however depend on where they usually stand in litigation. Many large corporations are often on the receiving end of claims. I expect SMEs, which represent the vast majority of corporations and significantly contribute to our economies, to be in favour of improvements and additional resources to the justice system.

Then, there's still the vast majority of disputes that aren't connected to any of those groups. These cases don't involve corporates or consumers. That's where you could bring in NGOs, human rights organisations, and others that defend and promote access to justice in general. These groups could advocate for reforms across a broader spectrum of legal issues.

Litigation funders (like us) are part of the ecosystem, particularly in areas like consumer law and business litigation. We can play a meaningful role. After all, it's also in our own interest that the justice system works properly.

Finally, I see this as a project driven by a common interest, also involving courts and judges. Of course, judges must remain neutral. But within that neutrality, they can still be vocal advocates for reforms that will improve justice and how they themselves can contribute to its mission and objectives.

This is why I believe any discussion and solutions will require a broad coalition: judges, lawyers, associations, NGOs, businesses and also funders. Most of these groups (if not all) have a clear and genuine interest in an efficient and effective justice system.

Funders have absolutely no interest in courts being submerged with frivolous claims. That would only make things worse. It would clog the courts, overwhelm the system, and ultimately delay the resolution of legitimate claims, including the ones we choose to fund. That would be completely counterproductive.

We are actually a filter. We will not fund a claim if it doesn't have enough merit. That's a fundamental part of our role. More importantly, it is a necessity if we want our activity to be profitable and sustainable.

We, as funders, have an interest in justice working properly, because that's the very essence of our activity.

That's why I would say we are a natural ally and a contributor to an efficient justice system.

And we're happy to be part of the discussion. But that conversation must put the priority where it truly belongs: on how justice is functioning overall.

Obviously, it's also in our own interest that litigation funding works properly, and that people have trust in what we do. If people begin to question the positive value of litigation funding, or doubt the contribution it can make to their lives (as consumers, citizens, or businesses), then the model simply won't work.

So we must ensure that our activity earns and maintains public trust. That's why we actively promote good practices as a funder. We were among the founders of the European Litigation

Funders Association (ELFA, European Litigation Funders Association) whose members must comply with a Code of Conduct (Code of Conduct).

Rather than portraying litigation funders as "profiteers" of the justice system, like some would want to depict us, I would consider ourselves as supporters, contributing to its essential role and mission.

I sometimes use a comparison with car racing, although I do not call myself a fan of motorsport:

You may have the best pilot, the fastest car, and a world-class racetrack. But if you don't have the fuel, then what's the point? You can walk the track, admire the car, maybe even talk to the pilot, but without fuel (or electricity if we are talking about electric cars) there's no race happening.

That's how I see the justice system.

Let's break it down:

- The pilot: this is the lawyer, who steers the case.
- The car manufacturer: perhaps the claimant or the claim, building the core of the case.
- Those providing the fuel: litigation funders like us, making sure the case (the car) can go the distance.

And most importantly, it's those maintaining the track: the courts, the judiciary, and the public institutions responsible for ensuring that the justice system is functional and efficient.

Justice (the racetrack) must be in good shape. If it's full of potholes, crumbling barriers, or debris, no one can race. No matter how good the pilot, how powerful the car, or how much fuel you have, they are meaningless if the racetrack is impracticable.

Of course, this analogy might only resonate with motorsport fans, but it captures the point. All parts of the system must work together, or none of it works at all.

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