PANORAMIC

LITIGATION FUNDING

Netherlands

NIVALION
Elevating legal finance

Ploum
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LEXOLOGY

Litigation Funding 2026

Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights, including regulation and regulators; funders' rights (choice of counsel, participation in proceedings, veto of settlement and funding termination rights); conditional and contingency fee agreements; judgment, appeal and enforcement; collective actions; costs and insurance; disclosure and privilege; disputes between litigants and funders; and recent trends.

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Contents

Litigation Funding

UPDATE AND TRENDS

Current developments

Contributors

Netherlands

Nivalion AG	NIVALION
Olivia Furter	olivia.furter@nivalion.com
Ploum	Ploum Rotterdam Law Firm
Iris Brinkhof	i.brinkhof@ploum.nl
Michel Jacobs	m.jacobs@ploum.nl

REGULATION

Overview
Is third-party litigation funding permitted? Is it commonly used?

Third-party litigation funding (TPLF) is permitted in the Netherlands in both litigation and arbitration proceedings. Indeed, over the past few years, TPFL has become increasingly common. This trend has gained traction due to the high need for external funding in complex claims, especially in collective redress cases under the Mass Damage Settlement in Collective Action Act (WAMCA).

Law stated - 30 November 2025

Restrictions on funding fees
Are there limits on the fees and interest funders can charge?

There are no statutory limits on the fees or interest that funders can charge under Dutch law. The fees can be freely negotiated between the funder and litigants, subject to article 6:248(2) of the Dutch Civil Code, which allows courts to intervene if they find that a provision of a contract is in conflict with the principles of fairness and equity. In practice, courts rarely intervene. An average compensation of 25–30 per cent is considered common and reasonable in the Netherlands.

In the context of mass proceedings, courts will consider the reasonableness of the funding arrangements when assessing the financing arrangement of the claim vehicle at the admissibility stage.

In case law of 25 October 2023 (ECLI:NL:RB:AMS:2023:6694), the District Court of Amsterdam gave preliminary guidance on the compensation of litigation funders. The court mentioned that a stipulated compensation could possibly be excessive if it is assumed that a certain percentage of the compensation is applicable regardless of the amount of the damages awarded and regardless of the number of injured parties that can claim damages. The court assumed that a maximum multiple of five of the amount invested by the litigation funder or of the amount made available to the foundation can be considered an appropriate maximum. The court acknowledged that it is entering new territory with this approach and allowed parties to respond to the preliminary principles. While this approach has raised question marks within the Dutch legal community, in 2023/2024, this topic has not yet been further discussed in the pending proceedings.

In line with its earlier ruling, in a recent case decision of 25 September 2024 (ECLI:NL:RBAMS:2024:5972), the District Court of Amsterdam expressed concern that a funding agreement that grants a funder a success fee of up to 25 per cent of the damages awarded to the injured parties is potentially excessive. The court emphasised that a litigation funder's compensation must be reasonably proportionate to the amount the funder has financed. Specifically, the court signalled an intention that it considered five times the amount invested by a litigation funder as an appropriate maximum in order to ensure compliance with the requirement of section 3:305a section 2 sub c of the Dutch Civil Code (DCC). Consequently, in this particular case, the court granted the litigation funder the opportunity to amend the funding agreement accordingly.

Similarly, in its ruling of 8 January 2025 (ECLI:NL:RBMNE:2025:10), the District Court of Midden-Nederland held that where a funder's success fee exceeds 25 per cent of the collective damages awarded, the representative organisation bears a heightened duty to substantiate why this rate is justified.

Finally, in recent case law of 7 October 2025 (ECLI:NL:GHAMS:2025:2666), the Court of Appeal of Amsterdam clarified that assessing whether the litigation funder's compensation is reasonable generally requires knowledge of the actual outcome of the case. The court stressed that what can be considered a reasonable remuneration for litigation funders depends on case-specific factors such as the duration of the proceedings, the amounts invested by the litigation funder and the fixed or agreed collective compensation. In summary, the court found that no universal percentage cap can be predetermined for all types of collective settlements or collective damage assessments.

Law stated - 30 November 2025

Specific rules for litigation funding

Are there any specific legislative or regulatory provisions applicable to third-party litigation funding?

Currently, no specific (statutory) legislation or regulatory provisions apply to third-party litigation funding in the Netherlands if the funding concerns regular and non-collective proceedings. The relationship between the funder and the funded party is set out in a litigation funding agreement. Such agreements are governed by general principles of contract law, such as article 6:248 of the Dutch Civil Code, which ensures that contracts adhere to principles of reasonableness and fairness.

However, certain rules applying to collective actions brought forward by a claim vehicle under the Mass Damage Settlement in Collective Action Act (WAMCA) have implications for funders.

- Article 305a, paragraph 2 of the Dutch Civil Code (DCC) provides, eg, that individuals represented by the claim vehicle must have effective and suitable mechanisms to participate in the decision-making process, and that the claim vehicle possesses sufficient financial resources to pursue the claim. It follows from the parliamentary papers associated with article 305a DCC that a court may review the funding structure between a claim vehicle and a funder and that the claim vehicle (not the funder) must have sufficient control over the legal action.
- Directive 2020/1828 obliges every member state to provide for a representative action procedure for consumers in its national law. The Directive was implemented in the Netherlands on 25 June 2023, although most of the Directive's requirements were already included in the WAMCA, which came into effect on 1 January 2020.
- The Claim Code 2019 is a body of soft law and a code of conduct for foundations and associations (claim vehicles) that bring collective actions or negotiate collective settlement agreements. The Claim Code gives guidance for the Dutch courts on how

to assess the standing of claim vehicles and aspects of third-party funding. It consists of seven comply or explain principles, each with a further explanation of the principle.

Law stated - 30 November 2025

Legal advice
Do specific professional or ethical rules apply to lawyers advising clients in relation to third-party litigation funding?

Lawyers advising clients in relation to third-party litigation funding must adhere to the strict ethical rules of the Dutch Bar Association. These rules emphasise independence, confidentiality and the duty to avoid conflicts of interest, as outlined in the Code of Conduct for Lawyers and article 10a of the Lawyers Act. Any information shared with funders must respect the client's confidentiality. Lawyers must ensure that the client's interests are paramount, not those of the funder.

Law stated - 30 November 2025

Regulators
Do any public bodies have any particular interest in or oversight over third-party litigation funding?

There is no specific public body that oversees litigation funding. However, according to the study on Mapping Third Party Litigation Funding in the European Union, third-party funders may be categorised as investment firms by the Dutch Authority for the Financial Markets (Autoriteit Financiële Markten (AFM)) in accordance with the Act on Financial Supervision (Wet op het financieel toezicht (Wft)) – provided they fall under the definition of article 1:3 of said act. In this case, funders would be required to obtain a licence from the AFM and follow the provisions of the Wft and related regulations.

Law stated - 30 November 2025

FUNDERS' RIGHTS

Choice of counsel
May third-party funders insist on their choice of counsel?

Third-party funders cannot insist on their choice of counsel, as the clients have the ultimate right to choose their legal representation. However, funders may condition their investment on the involvement of a specific counsel accepted by the funder. This is supported by article 6:248(1) of the Dutch Civil Code (DCC), which allows parties to contract freely but within the bounds of fairness. In the context of mass proceedings and at the admissibility stage, the court may pay attention to the funding agreement and will typically assess whether decisions on the choice of lawyers would prevent the client from having control over the litigation process, or would allow the funder to have decisive influence over the claim, or both. In several cases, the court has examined the funding agreement at issue and subsequently

ruled that certain provisions restricting the freedom to choose or replace one's own counsel resulted in the representative organisation lacking sufficient control. In each of these cases, the court granted the representative organisation the opportunity to amend the funding agreement, after which the court found the revised agreement to be satisfactory.

Law stated - 30 November 2025

Participation in proceedings

May funders attend or participate in hearings and settlement proceedings?

Funders are not considered parties to the litigation and generally cannot participate in hearings or settlement proceedings. However, court hearings are public in the Netherlands, as stipulated in article 27 of the Dutch Code of Civil Procedure, allowing funders to attend without actively participating. For arbitration, confidentially often applies, and whether a non-party to the proceedings may attend depends on the applicable arbitration rules.

Law stated - 30 November 2025

Veto of settlements

Do funders have veto rights in respect of settlements?

In non-collective proceedings, funders could, in principle, include provisions foreseeing veto rights in a funding agreement. However, according to recent best practices, funding agreements do not foresee a veto right, but only require the funder's consultation before settling a claim. Typically, the funder's interest remains safeguarded given the funder's priority position in the waterfall and the structure of its success fee, which is typically primarily or exclusively based on a time-dependent multiple of the committed amount.

In the context of collective actions, article 305a, paragraph 2, subsection b of the DCC provides that an external funder may not exert decisive influence over procedural decisions, which means that a third-party funder may not have ultimate authority to approve or reject a settlement. The Claim Code 2019, a body of soft law, seems to define 'decisive influence' in stricter terms than the law. Recent court decisions also tend towards a stricter interpretation.

Law stated - 30 November 2025

Termination of funding

In what circumstances may a funder terminate funding?

In principle, litigants and funders are free to agree in the funding agreement on the circumstances entitling the parties to terminate funding. In practice, typical grounds for termination by the funder that may be agreed are:

- a material breach of the litigant's contractual obligations;
- insolvency of the litigant or the opposing party; or

- a change of circumstances leading to a significant decrease in the likelihood of success.

Dutch statutory law allows a contract to be cancelled due to fraud or error under articles 3:44 and 6:228 of the DCC. Furthermore, under articles 6:265 and 6:258 of the DCC, Dutch law allows a contract to be dissolved in the case of fundamental breach or unforeseen circumstances.

Law stated - 30 November 2025

Other permitted activities

In what other ways may funders take an active role in the litigation process? In what ways are funders required to take an active role?

Funders may take an active role in litigation through contractual provisions granting them access to case updates, documents or litigation strategy decisions. However, in cases relating to collective actions, such participation rights must be clearly outlined in the funding agreement to ensure that the client retains control over the litigation process and the funder does not exert a decisive influence over the claims (article 305a, paragraph 2, subsection b of the DCC). The fact that the funder must be regularly informed and consulted does not in itself mean that the representative organisation has insufficient control. The Claim Code 2019, a body of soft law, seems to define 'decisive influence' in stricter terms than the law.

Law stated - 30 November 2025

CONDITIONAL FEES AND OTHER FUNDING OPTIONS

Conditional fees

May litigation lawyers enter into conditional or contingency fee agreements?

Dutch law prohibits fully conditional or contingency fee agreements where a lawyer's fees depend entirely on the outcome of the case. 'No cure no pay' arrangements or a fee set as a percentage of the awarded claims are generally prohibited under the applicable professional rules.

However, lawyers are allowed to agree to fee arrangements that include a (temporary) reduction in the hourly rate applicable to the services, provided that the actual costs are covered. The reduced hourly rates may be raised if and when the proceedings are completed successfully.

Law stated - 30 November 2025

Other funding options

What other funding options are available to litigants?

Litigants can access other funding options, including the following:

- legal aid (under the Legal Aid Act) for individuals with limited financial resources; or
- legal cost insurance, which may include limitations on the type of claims and typically needs to be arranged before the events giving rise to the dispute have occurred.

In many cases, these options do not constitute suitable alternatives to third-party litigation funding.

Law stated - 30 November 2025

JUDGMENT, APPEAL AND ENFORCEMENT

Time frame for first-instance decisions

How long does a commercial claim usually take to reach a decision at first instance?

Commercial claims in the Netherlands typically take between nine months and several years to reach a decision at first instance. This time frame depends on the complexity of the case and the court's caseload. Cases that include expert evidence, witness hearings and multiple rounds of written procedural documents take longer.

Law stated - 30 November 2025

Time frame for appeals

What proportion of first-instance judgments are appealed? How long do appeals usually take?

In civil law proceedings, according to the Report 2024 of the Judiciary Counsil (Raad voor Rechtspraak), the appeal rate was 10 per cent between 2022 and 2024.

Appeals generally take between one and two years, depending on the complexity of the case, the number of submissions and motions and the court's schedule and caseload.

An arbitral award is binding. Both parties must comply with the arbitral award. Appeals are available at some arbitration boards. If the option to appeal is not included in the applicable arbitration rules, arbitral appeal is in principle only possible if the parties have provided for it by agreement (article 1061b of the Dutch Code of Civil Procedure (DCCP)).

Otherwise, the only remedy open, but without suspensive effect, is the reversal of an arbitral award. However, the threshold for a reversal is high – civil courts are very reluctant to set aside arbitral awards. The grounds are exhaustively defined in the law (article 1065 DCCP).

We are not familiar with statistics of the durations of arbitral appeal proceedings.

Law stated - 30 November 2025

Enforcement

What proportion of judgments require contentious enforcement proceedings? How easy are they to enforce?

It follows from article 430 of the DCCP that judgments and court orders given by the Dutch court are directly enforceable in the Netherlands after service by the bailiff. If the losing party does not comply with the judgment or court order after service by the bailiff, the bailiff could attach the assets of this party.

Judgments from foreign courts are not enforceable in the Netherlands, unless there is a basis for it in a treaty or an act. Judgments from other EU member states in civil and commercial matters can directly be enforced based on the Brussels I bis Regulation (No. 1215/2012).

If the law or treaty concerned does not designate any other route, enforcement is dependent on obtaining an exequatur through the procedure of article 985 et seq. of the DCCP.

Where no legal or treaty basis exists, the case may be brought again before the Dutch courts (article 431, paragraph 2 of the DCCP). The Dutch court must – given the circumstances of the case – assess whether, and to what extent, effect should be given to the decision of the foreign court.

According to Dutch case law, a foreign judgment is in principle recognised in the Netherlands if:

- the jurisdiction of the court that rendered the decision is based on a ground of jurisdiction that is generally acceptable by international standards;
- the foreign decision was arrived at in judicial proceedings that meet the requirements of due and proper administration of justice with adequate safeguards;
- recognition of the foreign decision is not contrary to Dutch public policy; and
- the foreign decision is not incompatible with a decision of the Dutch court rendered between the same parties, or with an earlier decision of a foreign court rendered between the same parties in a dispute concerning the same subject matter and based on the same cause of action, provided that such earlier decision is capable of recognition in the Netherlands.

A distinction must be made between the enforcement of a Dutch arbitral award (ie, if the location of arbitration is in the Netherlands) and the enforcement of an arbitral award made in a foreign state.

The enforcement in the Netherlands of a Dutch arbitral award can – according to article 1062 of the DCCP – only take place after the interim injunction judge of the district court of the district in which the place of arbitration is located has granted leave to do so at the request of one of the parties.

An arbitral award rendered in a foreign state to which a recognition and enforcement treaty applies may, at the request of either party, be recognised and enforced in the Netherlands (article 1075 of the DCCP). These procedures are frequently governed by the 1958 New York Convention, which the Netherlands has ratified.

If no treaty of recognition and enforcement is applicable or an applicable treaty allows recourse to the law of the country in which recognition or enforcement is sought, an arbitral award rendered in a foreign state may be pursued under article 1076 of the DCCP. In such case, a foreign arbitral award may be recognised and enforced upon presentation of both the original, or a certified copy of, the arbitration agreement and the arbitral award, unless any of the formal requirements listed in article 1076, paragraph 1(A)(a)–(e) are not met or the recognition and enforcement of the award would be contrary to public policy.

Law stated - 30 November 2025

COLLECTIVE ACTIONS

Funding of collective actions

Are class actions or group actions permitted? May they be funded by third parties?

Class actions and mass claims are permitted under Dutch law and can be funded by third parties. The Dutch legal system, particularly with the introduction of the Mass Damage Settlement in Collective Action Act (WAMCA) in January 2020, encourages collective actions, and litigation funding is an important component in enabling claimants to pursue large-scale claims.

The Dutch Civil Code explicitly supports mass claims, with the implementation of article 3:305a of the Dutch Civil Code (DCC) allowing a foundation or association to represent a group of claimants to protect their shared interests, and claim damages suffered, in the Netherlands. The WAMCA is based on an opt-out arrangement for Netherlands-based claimants and an opt-in arrangement for individuals who have their place of residence abroad. The law is applicable to cases filed after 1 January 2020 and to mass claims related to events that took place on or after 15 November 2016.

Dutch claim vehicles (and other specific EU member state-approved vehicles) may act both on the claimant's side in their own names and in the names of their articles of association for the benefit of the interests of others. WAMCA imposes certain criteria on these vehicles (in article 3:305a of the DCC), as does the Dutch Claim Code 2019.

Before the court will deal with the merits of the case, it should first decide, in the admissibility phase, that the claim vehicle meets the admissibility requirements pursuant to article 1018c, paragraph 2 of the Dutch Code of Civil Procedure (the formal requirement) and article 3:305a, paragraph 1-3 of the DCC (the substantive requirements). The claim vehicle must prove, inter alia, to have sufficient funding to cover litigation costs and expertise to maintain control over the lawsuit itself. Third-party funders are not permitted to have dominant control over the claim or lawsuits, and courts tend to request that the party provide the funding agreement so that the court can – as happened in some recent cases – integrally assess that agreement.

Law stated - 30 November 2025

COSTS AND INSURANCE

Award of costs

May the courts order the unsuccessful party to pay the costs of the successful party in litigation? May the courts order the unsuccessful party to pay the litigation funding costs of the successful party?

According to article 237 of the Dutch Code of Civil Procedure (DCCP), the unsuccessful party pays the costs of the litigation, namely, the extrajudicial and litigation costs as well as the court registry fees.

Litigation costs may include, among other things, witness and expert expenses, costs of extracts from public registers, bailiff costs and lawyers' fees. The lawyers' fees are assessed according to a fixed, court-approved scale, which typically cover only a small fraction of the actual costs incurred.

Full compensation of the successful party's actual legal costs is limited to cases related to intellectual property, or in cases of misuse of law.

The courts may order the unsuccessful party to pay extrajudicial costs within the meaning of article 6:96, paragraph 2 of the Dutch Civil Code. This includes the costs of experts and expert opinions (not lawyers' fees). Courts apply the test of reasonableness regarding the decision to incur costs and the amount of costs involved. However, as at the time of writing, we are not aware of any specific judgments whereby the courts have awarded these costs.

In proceedings involving mass (tort) claims, a judge may deviate from article 237 of the DCCP. According to article 1018L, paragraph 1 of the DCCP the court may in its judgment, if the claim is prima facie unfounded, multiply the fees of the successful party's lawyer at the expense of the unsuccessful party by a maximum of 500 per cent. According to article 1018L, paragraph 2 of the DCCP a judgment involving mass (tort) claims shall also include an order for costs whereby the court may, to the extent necessary, order the unsuccessful party to pay reasonable and proportionate court costs and other costs incurred by the successful party.

Finally, and according to legal literature and legislative history, it seems possible, under article 6:96 of the Dutch Civil Code or article 1018L of the DCCP, or both, to recover from the liable party the success fee stipulated by the litigation funder in exchange for funding a collective action. The profit and risk fee is central to this. It is plausible that the entire success fee is not fully recoverable. Reasonableness limits the amount, but there is no case law on this aspect in the Netherlands yet.

The Netherlands Arbitration Act does not contain provisions for the recovery of costs. Usually, the parties will have agreed upon specific terms in this regard, for example, by relying on arbitration rules such as the arbitration rules of the Netherland Arbitration Institute (NAI), which contain express provisions. Otherwise, the arbitral tribunal may allocate costs in the way it deems fit.

Law stated - 30 November 2025

Liability for costs
Can a third-party litigation funder be held liable for adverse costs?

Under Dutch law, third-party funders are not directly liable for adverse costs. A funder may, however, agree to cover the adverse costs risk in the funding agreement. In this case, the

funder is obliged to hold the funded party harmless for adverse costs. However, usually adverse costs are relatively low, because they are ascertained on the basis of court-approved scale of costs.

Law stated - 30 November 2025

Security for costs

May the courts order a claimant or a third party to provide security for costs? (Do courts typically order security for funded claims? How is security calculated and deposited?)

Dutch law does not provide a basis to order a third party, such as a third-party litigation funder, to provide security for costs.

Article 224 of the DCCP states that all persons not domiciled or habitually resident in the Netherlands who file a claim with a Dutch court or intervene in legal proceedings are obliged, at the request of the other party, to provide security for the costs of the proceedings and the damages they might be ordered to pay.

There is no obligation to provide security, if:

- this arises from a treaty or an EC regulation;
- the cost order is enforceable in the place where the claimant is domiciled or habitually resident;
- it is reasonably plausible that recovery is possible in the Netherlands; or
- this would impede effective access to justice.

Dutch law also does not provide any specific rules on the provision of security for costs by arbitral tribunals. It follows from article 1043b, paragraph 3 of the DCCP that the arbitral tribunal may, in connection with an interim relief, require each party to provide adequate security, for example, for the costs of proceedings and legal assistance.

Law stated - 30 November 2025

Security for costs

If a claim is funded by a third party, does this influence the court's decision on security for costs?

The fact that the claim is funded by a third party does not influence the court's decision by itself. On the basis of article 224 of the DCCP, a party may order that the other party – if not domiciled or habitually resident in the Netherlands – provide security for the costs of the proceedings and the damages they might be ordered to pay.

Law stated - 30 November 2025

Insurance

Is after-the-event (ATE) insurance permitted? Is ATE commonly used? Are any other types of insurance commonly used by claimants?

After-the-event insurance products are permitted in the Netherlands but are not as commonly used as in other jurisdictions. The best-known type of an after-the-event insurance is Adverse Costs Insurance, which covers the risk that the court or tribunal orders the insured party to reimburse the opposing party's legal costs if the case is lost. This type of insurance can be obtained as a stand-alone solution or in combination with third-party litigation funding in which case the premium forms part of the funded costs. Given that adverse costs in Dutch state-court proceedings are typically low, this product is mainly relevant in arbitration.

Other available litigation risk insurance options include:

- Own Side Cost Insurance, which covers the insured party's own legal costs (up to an agreed limit) if the case is unsuccessful;
- Judgment Preservation Insurance, which protects against the risk that a favourable first-instance decision is overturned on appeal, or that a favourable arbitral award is set aside; and
- Adverse Judgment Insurance, which protects a defendant against the risk that a court or tribunal finds in favour of claimant and orders the defendant to pay damages exceeding an agreed threshold.

Besides, legal protection insurance is more frequently used in the Netherlands. In contrast to ATE insurance solutions, this type of insurance is arranged before the events giving rise to the dispute have occurred (before-the-event insurance) and typically provides for costs coverage to the extent of the specify policy for certain types of claims.

Law stated - 30 November 2025

DISCLOSURE AND PRIVILEGE

Disclosure of funding

Must a litigant disclose a litigation funding agreement to the opposing party or to the court? Can the opponent or the court compel disclosure of a funding agreement?

In principle, there is no legal obligation to disclose a litigation funding agreement to the opposing party or the court.

In the context of mass claims, pursuant to article 305a, paragraph 2, subsection c of the Dutch Civil Code (DCC), a claim vehicle must have sufficient resources and control over the legal action. Based on these requirements the court may review the funding agreement in order to assess whether the content of the funding agreement, briefly stated, contains unreasonable agreements or allows for disproportionate compensation for the claim vehicle and the funder.

Pursuant to article 22, paragraph 1 of the Dutch Code of Civil Procedure (DCCP), the court may request provision of the funding agreement between the claim vehicle and the third-party funder. In 2002, the Dutch Supreme Court ordered that there is no obligation

for the plaintiff to provide the funding agreement to the defendant(s). In practice, most Dutch courts comply with this rule of reasoning. However, the Courts of Amsterdam and Noord-Holland recently ordered differently. The Court of Amsterdam ruled that defendants must be provided with a version of the funding agreement, allowing for the remuneration to be redacted.

Where the court has reviewed the funding agreement and believes the claim vehicle does not comply with the requirements as per article 305a, paragraph 2, subsection c of the DCC the claim vehicle may be declared inadmissible in its claim. However, Dutch courts tend to allow the claim vehicle and the funder to amend the funding agreement in order to comply with the requirements. Courts base their decision on admissibility on the facts available at the time of the judgment and not the facts that were presented on the date of the claim's initial filing with the court. See, for instance, Court of Amsterdam, 25 September 2024, ECLI:NL:RBAMS:2024:5972 (***ASC/Google***).

In addition to the court's ability to request that the claim vehicle provide the funding agreement on the basis of article 22 of the Dutch Code of Civil Procedure (DCCP), the defendant may also request to see the funding agreements pursuant to the conditions under articles 194 to 195a of the DCCP, which codify the right of inspection and the surrender of documents.

The Dutch Arbitration Act does not contain any provisions requiring a party to disclose funding. However, the Netherlands Arbitration Institute (NAI) has introduced in article 8, subsection k of its Arbitration Rules a disclosure requirement regarding external funding of the proceedings. These arbitration rules are in force as of 1 March 2024.

Law stated - 30 November 2025

Privileged communications

Are communications between litigants or their lawyers and funders protected by privilege?

Communications between a lawyer and client are protected by legal privilege under article 165 and article 843a of the DCCP. The privilege is held by the lawyer, not the client. The funder is not covered by this article. However, it is advisable when the lawyer address their communications to the funder that they also address such communications to their client, to be able to argue that the communication is covered by legal privilege, at the very least. In general, communications between a litigant or their lawyer and the funder can be made subject to non-disclosure agreements, but that will not mean that this communication is protected by legal privilege.

Law stated - 30 November 2025

DISPUTES AND OTHER ISSUES

Disputes with funders

Have there been any reported disputes between litigants and their funders?

On 11 January 2023 (ECLI:NL:RBROT:2023:228), the court in Rotterdam dealt with the termination of the funding agreement by the funder due to the fact that the litigant did not inform the funder properly. The funder therefore claimed damages, which claim was mostly awarded by the court.

The Amsterdam Court of Appeal and Dutch Supreme Court dealt with a case in which the funder claimed to be authorised to take over the litigants' position in pending proceedings based on the fact that the funder qualified as the pledgee of the litigants' claim towards the defendant. See Court of Appeal Amsterdam, 26 July 2022, ECLI:NL:GHAMS:2022:2158.

In the context of mass claims, the cases of ***Airbus*** (ECLI:NL:RBDHA:2023:14036) and ***TikTok*** (ECLI:NL:RBAMS:2023:6694) and its subsequent appeal (ECLI:NL:GHAMS:2025:2666), highlight how courts scrutinise funding agreements to ensure that funders do not control litigation outcomes.

In the ***TikTok*** case, the Amsterdam court raised concerns about clauses in the funding agreements that gave funders too much control over litigation strategy and settlements, requiring adjustments to ensure the independence of the claim foundation. The court emphasised the risk of conflicts if funders' interests diverge from those of the claimants.

In the ***Airbus*** case, the Hague court examined how the foundation SILC became overly dependent on its funders, Therium and DRRT, which allowed them to influence key decisions. The court ruled that such dependency undermined the foundation's independence and highlighted the need for decision-making power to remain with the claimant, not the funder.

Law stated - 30 November 2025

Other issues

Are there any other issues relating to the law or practice of litigation funding that practitioners should be aware of?

Practitioners should be aware that litigation funding is not heavily regulated in the Netherlands, and parties must ensure that clear contractual terms govern the funding relationship, including the funder's rights and obligations.

Law stated - 30 November 2025

UPDATE AND TRENDS

Current developments

Are there any other current developments or emerging trends that should be noted?

Litigation funding is expected to grow in the Netherlands, particularly in mass claims and commercial disputes. The use of collective redress mechanisms under the Mass Damage Settlement in Collective Action Act (WAMCA) and the potential for higher-value claims have driven increased interest in third-party funding in the Netherlands.

In 2025, five years after the WAMCA entered into force, the Dutch Parliament commissioned a comprehensive evaluation of the regime, which resulted in the publication of a two-part

report. The report sets out several proposals to enhance the overall effectiveness and efficiency of WAMCA proceedings. Among other things, the researchers suggest developing either a model litigation-funding agreement or clearer guidelines in aid of the courts' determination of whether a representative organisation has sufficient resources for and control over the collective action. It remains to be seen to what extent the findings of the report will lead to legislative or procedural adjustments in the coming years.

Within the European Union (EU), a debate on the extent to which third-party litigation funding requires regulation has been gathering pace over the past few years. The conssistent growth and increased use of third-party litigation funding have prompted the European Parliament to recommend the adoption of a regulatory framework for the European funding industry. However, the European Commission decided to conduct a mapping study of the existing European litigation funding landscape before rolling out any rules. The mapping study was published in March 2025, and contains a comprehensive examination of the legal frameworks, practices and stakeholder perspectives on third-party litigation funding across the EU, and in selected non-EU states. The study revealed that most states do not have specific legislation governing third-party litigation funding. Instead, funding is primarily governed by national contract and civil procedure law. Where regulation exists, it is fragmented and inconsistent, which creates uncertainties for litigants, funders and courts. Against this background, the study outlined three possible policy scenarios without providing any recommendations: maintaining the status quo, introducing light-touch regulation or implementing a comprehensive regime. Considering the results of the study, in November 2025, the European Commission announced that there is no current intention to put forward any proposal to regulate third-party litigation funding at EU level.

Law stated - 30 November 2025