



**Erasmus
School of
Law**



**Utility, necessity, design and costs of a (revolving) litigation fund
for collective actions**

Report for the Research and Documentation Centre (WODC)

SUMMARY

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ENGLISH SUMMARY

This study addresses the question of the usefulness and necessity of a litigation fund for collective actions under the Dutch Act on Settlement of Mass Damage in Collective Action (WAMCA). On the basis of desk research, (legal) comparative research and empirical research, it identifies the current funding possibilities and bottlenecks, how practice has developed under the WAMCA since its introduction on 1 January 2020, to what extent a revolving litigation fund could provide a solution to bottlenecks in the funding of collective actions and how it could be designed.

1. BACKGROUND

The collective settlement of mass claims has become an important area of private law in the Netherlands. Central to this study is the question of the usefulness and necessity of a litigation fund for collective actions under the WAMCA, and by extension, how such a fund could be designed. With the introduction of the WAMCA on 1 January 2020, the possibility of filing collective damage claims on an opt-out basis has been made possible under Art 3:305a of the Dutch Civil Code (DCC). The WAMCA complements the Dutch instruments for the settlement of collective damages, together with the 2005 Collective Mass Claims Settlement Act (WCAM) for collective settlements.

With the introduction of an opt-out collective damages procedure, admissibility requirements have been further tightened, for both damages actions, as well as non-damages actions. For instance, the requirements for representativeness of interest organisations on the claimant side (foundations, associations) have been tightened, which include oversight, appropriate decision-making mechanisms, and the availability of relevant information on an easily accessible internet page. The organisation should also have sufficient financial resources and experience and expertise with regard to conducting collective actions. In addition, the claim must have a sufficiently close link to the Dutch legal sphere.

The concrete reason for the study is twofold. First, the subject of collective action and settlement funding has been subject to scientific and societal interest for some time. In addition to the introduction of the WAMCA in the Netherlands, important developments in the field of collective actions and their funding have also taken place in the European context, in particular the creation of the Representative Actions Directive at the end of 2020 (hereinafter: the Directive). This Directive also contains some rules on the financing of collective actions and has led to some amendments to the WAMCA, which entered into force on 25 June 2023. In addition, in September 2022, the European Parliament adopted a resolution making recommendations to the European Commission regarding responsible private litigation funding.

Collective actions are often complex cases, involving many (potential) parties and stakeholders, for which possible forms of individual legal aid (e.g. publicly funded legal aid or legal expenses insurance) are not available or insufficient. The introduction of the WAMCA also seems to have given an impetus to the use of commercial litigation funding in the Netherlands. This has also raised the question of whether alternatives to commercial litigation funding might be desirable and feasible. A revolving litigation fund is an important example. Such a fund was also proposed in an earlier study

commissioned by the Dutch Research and Documentation Center (WODC) on the modernisation of procedural law in light of Big Data.¹

Secondly, the aforementioned Directive allows member states to provide that funds, which are not claimed in a collective redress action within a certain period of time, may be reallocated ('cy-près distribution'), which already happens in the Netherlands under the WCAM practice. This could also fuel a revolving litigation fund and further promote the consistency and uniformity desired by the legislator between WCAM and WAMCA practice. Importantly, the Directive also urges member states to provide for financial support from the government. This could include more structural support for competent authorities and/or interest groups, but also a reduction or waiver of court fees or other administrative costs, access to legal aid, reimbursement of actual litigation costs, as well as the abolition of litigation cost orders for representative interest groups.

2. PROBLEM STATEMENT AND RESEARCH QUESTIONS

The central research question of the study is twofold:

First, is there a need and/or a necessity for a (revolving) litigation fund for class actions? Second, how could a (revolving) litigation fund be funded and designed in the Netherlands?

This twin problem statement falls into two main questions, with associated sub-questions.

A. Utility and necessity of a (revolving) process fund

This research question (A) on the need and/or necessity for a (revolving) litigation fund for class actions, is answered on the basis of the following sub-questions:

- (1) What funding options currently exist in general to finance a class action under the WAMCA and what are their advantages and disadvantages? What does the funding landscape in the Netherlands look like?
- (2) How has the market for commercial third-party funding, or Third Party Litigation Funding, developed and in particular for class actions?
- (3) What regulation applies at international, national and European level, in particular the Representative Actions Directive?
- (4) What are the costs associated with pursuing collective actions as conducted under the WAMCA?
- (5) What are the problems of funding and is there a need for other sources of funding?
- (6) For which problems could a litigation fund be a solution, and could a litigation fund be revolving?

¹ B. van der Sloot & S. van Schendel, *De Modernisering van het Nederlands Procesrecht in het licht van Big Data, Procedurele waarborgen en een goede toegang tot het recht als randvoorwaarden voor een data-gedreven samenleving*, WODC 2019. English summary available at <https://repository.wodc.nl/handle/20.500.12832/2390>.

B. (Financial) design and costs of a (revolving) fund

This research question (B) on the design and cost of a (revolving) litigation fund in the Netherlands was answered using the following set of sub-questions:

(7) Do such funds exist in other countries and, if so, how are they designed? Which elements from (revolving) litigation funds elsewhere would lend themselves to application in the Dutch context?

(8) What could be the advantages and disadvantages of a possible Dutch litigation fund, how does it relate to other forms of financing, and how could this fund be designed?

(9) All things considered, is the introduction of such a litigation fund in the Netherlands, also in light of the Representative Actions Directive, useful and desirable?

The first part of the study focuses on the why of a possible litigation fund and addresses the question: is there a need and/or a necessity to create a (revolving) litigation fund for class actions? The second part of the study focuses on exploring and describing a possible design of a (revolving) litigation fund that fits the revealed needs and the intended purpose.

3. RESEARCH METHODS AND REPORTING

3.1 Research methods

To answer the above research questions, the following research methods were applied: (1) desk research, (2) comparative (law) research and (3) qualitative and quantitative empirical research.

(1) Desk research

The desk research consists of an examination of relevant legislation and regulation, literature review, case law review and content analysis of the WAMCA register. The research on legislation includes the relevant regulations in the Netherlands, as well as soft law under the Dutch 2011 Claims Code as amended in 2019. In addition, European regulations and, where relevant, regulations in other countries were examined, with particular reference to the Directive, the European Parliament's initiative for a Resolution recommending a directive for 'responsible private litigation funding', as well as the ELI-Unidroit European Model Rules of Civil Procedure. In particular, the desk research was conducted for the purpose of answering the questions on the financing possibilities and costs of collective actions, market developments for commercial third-party funding and its regulation in the Netherlands and in the European context (sub questions 1-4).

(2) Comparative (law) research

In addition to the desk research, more extensive research was conducted into similar litigation funds in other countries, of which Canada (Ontario and Quebec) and Israel were selected as the main jurisdictions. As yet, these are the only jurisdictions that have such funds and with which there is significant experience. The research is based on examination of relevant regulations, case law and literature in these countries. In addition to this and for verification purposes, four interviews took place with eight experts from these countries. This part of the study answers the question of comparable litigation funds abroad and to what extent they lend themselves to a similar implementation in the Netherlands and also provides insights into the methods of funding, advantages and disadvantages and the design of a possible litigation fund.

(3) Empirical research

To get a picture of the current Dutch market of litigation funding in mass damage cases, a systematic quantitative analysis of all cases listed in the WAMCA register until 1 October 2022 was done. For the analysis, documents from the WAMCA register were reviewed and filtered for a number of data important for this study. Case characteristics recorded for this research are the interest groups involved, the defendants involved, any funder involved, the type of collective action, the jurisdiction covered by the collective action, the (inter)national context of the collective action, the extent of any damages, what has been claimed by the plaintiff(s) and how the collective action is funded.

In addition, interviews were held with actors active in the current collective action field in the Netherlands. These aimed to get a picture of the inception of collective actions, the cost structure and financing of such cases, developments in the commercial financing market and to understand the bottlenecks in WAMCA practice and views on the usefulness and necessity of a litigation fund. A total of 15 interviews were conducted with 19 respondents. The group of respondents comprised 14 lawyers (10 of whom were independent and 4 'in-house' lawyers), 3 litigation funders and 2 claims foundations. In the interviews, respondents were asked about their experiences with WAMCA proceedings (where applicable compared to the old 3:305a regime, or compared to WCAM proceedings), the costs related to collective proceedings, funding strategies and related bottlenecks. Furthermore, they were asked for their views on the possible contribution of a litigation fund for collective actions to access to justice.

To complement the interviews, that were conducted mainly with (representatives of) plaintiffs with a view to inquiring about the utility and necessity of a litigation fund, a focus group meeting was held with five Dutch lawyers who have extensive experience in acting on the side of defendants in collective actions.

Finally, for triangulation and validation and to discuss some preliminary findings, an expert meeting was held. For this purpose, experts in the field of collective actions and settlements from the Netherlands and abroad were invited. A total of nine experts participated in the expert meeting. These were academics and representatives of a European consumer organisation or a financier.

3.2 Structure of the research report

The research report is largely structured based on the various research sources and methods, as described above. Since the resulting sub-reports have added value in their own right, it was decided to include them as a whole and not in a fragmented manner based on the research questions. Chapter 2 contains the desk research on the WAMCA, funding and regulation. Chapter 3 contains the (quantitative) analysis of WAMCA cases pending since its entry into force on 1 January 2020, up to 1 October 2022. Chapter 4 contains the (qualitative) analysis of the interviews conducted for this study. Chapter 5 contains the focus group and expert meeting reports. The comparative law study is set out in Chapter 6. Chapter 7 contains the analysis and conclusions based on the previous chapters and according to the research questions.

4. KEY FINDINGS

4.1 Funding options and funding practice under the WAMCA

Litigation can generally be financed in different ways, with the most important under Dutch law being self-financing and/or the personal contribution, publicly funded legal aid and legal aid insurance. However, in the Netherlands publicly funded legal aid is not available for collective actions in which organisations (foundations, associations) act as claimants. Legal aid insurances focus primarily on individual policyholders and play a role mainly in the phase of settlement of collective damages and sometimes to a limited extent in the so-called scoping phase, in which, in the case of identified abuses, the possibilities of and a plan for proceedings are worked out. Other funding opportunities come from crowdfunding, private (philanthropic) funds and donations. In practice, these funding sources play a limited role in collective actions for the time being. Results-based remuneration for the legal profession, which is of great importance in collective actions in some other jurisdictions, is not allowed in the Netherlands, or only to a very limited extent. The analysis of the WAMCA cases and the interviews show that personal contributions for non-damages actions are the main source of funding. This concerns contributions that organisations - mostly repeat players - receive from memberships and any other sources (e.g. donations). For collective actions seeking damages, litigation funding by commercial third parties is essential; all WAMCA cases seeking damages involve commercial third-party funding.

4.2 Market developments in commercial litigation funding and class actions

The Dutch market for commercial litigation funding is developing rapidly. It started under the WCAM and has gained further momentum with the WAMCA. Besides a number of Dutch-based third-party litigation funders, foreign parties are operating in the Netherlands. There are also a number of ad hoc funders for certain (consumer) cases and there are investors who, in cooperation with law firms, focus on funding specific claims, such as the Dieselgate cases against carmakers in connection with cheating software, which allowed emissions standards to be exceeded undetected. A number of US law firms also operate as litigation funders in the Netherlands, and recently a number of firms have set up branches here for the purpose of conducting collective actions. The practices of litigation funders differ and some do scoping and/or due diligence in-house, while other investors rely on requests from the market and outsource due diligence processes to external law firms. These developments have also prompted other market responses, such as the emergence of multi-purpose (ad hoc created) foundations that advocate for specific collective interests (especially in the areas of consumer and privacy law) and closer cooperation between the legal profession and litigation funders.

4.3 Regulation of litigation funding by commercial third parties

Regulation of litigation funding by commercial third parties is limited for the time being, both in the Netherlands and in most other countries. Firstly, Art 3:305a of the Dutch Civil Code contains (admissibility) requirements aimed at ensuring the representativeness and professionalism of plaintiff interest organisations, as well as guaranteeing that they have sufficient resources and that the control of the legal action lies sufficiently with these organisations. New litigation cost-sharing rules were also introduced under the WAMCA, both at the expense, and for the benefit, of plaintiff interest organisations: if a collective action is manifestly unfounded, the court may award five times the prevailing liquidation rate at the expense of the plaintiff as part of the admissibility assessment. If the action is successful, the interest group can claim reasonable reimbursement of actual litigation costs. In addition, the soft law provisions of the Dutch 2011 Claims Code as revised in 2019 are relevant. This Claim Code requires, inter alia, with regard to funding by commercial organisations, that the funding

agreement be in writing, and that the presence of external litigation funding should be disclosed. The Representative Actions Directive, applicable from 25 June 2023, allows commercial third-party funding under certain conditions. This Directive led to amendments to Art 3:305a of the Dutch Civil Code for cases covered by the Directive. These aim to ensure that the financing does not come from a financier who is a competitor of the party against whom the legal claim is directed or from a financier who is dependent on the party against whom the legal claim is directed. Finally, there is an initiative from the European Parliament for stricter regulation of commercial funding in the form of a recommended directive for 'responsible private litigation funding'. For now, however, this does not seem to lead to the introduction of new legislation given the initial reaction of the European Commission, that has demanded more 'evidence of need' of stricter regulation and wants to wait for the results of the implementation of the Directive.

4.4 Costs associated with collective actions

It has proved difficult to get a full picture of the costs associated with collective actions, partly because damages actions are still at an early stage of proceedings and this type of data is confidential. The litigation documents in the WAMCA register also do not (yet) provide insight into this information, but the interviews did reveal more about the cost structure. For non-damages cases, costs consist almost entirely of lawyers' fees, with amounts of around €25,000 mentioned for summary proceedings and between €40,000 and €50,000 for proceedings on the merits. Additional costs include bailiff fees, translation costs in the case of foreign parties, experts' fees, court costs and a possible cost order if the action is unsuccessful. For mass damages cases, costs are significantly higher and less predictable. Depending on the complexity of a case, legal fees were estimated at €150,000 to €500,000 for drafting the summons alone. In complex cases, the total of lawyers' fees and other legal experts is (much) higher, partly because of the much more extensive admissibility phase. In addition, significant costs are associated with the preliminary phase, including costs of scoping, the (preliminary) factual and legal investigation, the costs of raising funds and establishing and maintaining (ad hoc) foundations, cooperation and expert analysis. Finally, costs are associated with the identification and activation of the group of injured parties (book building), costs of mandatory negotiation with defendants, and settling and payment of damages. The total costs easily amounts to several million euros in the case of damages actions.

4.5 Problems in funding collective actions

For non-damages cases, the existing interest groups with litigation budgets that were interviewed indicated that they set up an annual fund from which litigation costs are paid and into which any proceeds are returned, but this is usually not a revolving form of funding. Funding has to be supplemented from membership fees and/or from private, mostly philanthropic, funds. Repeat players, who are responsible for a substantial portion of WAMCA proceedings, indicated that the available budget is limited, they have to select cases strictly and that WAMCA has proved cost-prohibitive compared to the old collective action regime. For damages cases, plaintiffs currently rely entirely on funding from commercial third parties. As yet, for the relatively limited number of damages cases, no significant problems have occurred in finding third-party funding. In any case, it could not be determined whether there were any cases, for which no external funding could be obtained. Bottlenecks are mainly the costs involved in the preliminary investigation of the case, because at that stage there may not be evident funding options, nor are there any concrete agreements with funders yet. Sometimes, however, some of these costs are borne by entrepreneurial lawyers and other advisers. Some funders also develop cases themselves by monitoring problematic behaviour of multinationals and/or are approached directly by aggrieved parties or technical experts who have identified a problem. In addition, the focus group pointed out the high cost of damages handling and

distribution once there is a settlement, as these costs are no longer covered by procedural cost orders. The interviews also revealed some procedural bottlenecks around the WAMCA that involve time and costs. In particular, reference was made to the long preliminary phase, the necessary research involved in the admissibility discussion, the documentation for entry in the register and the consultation requirements. Some uncertainties associated with the still relatively new legislation, including the ambiguity surrounding the interpretation of representativeness, also require additional investments to reduce the risks of the certification stage. A need for funding exists especially for legitimate, but commercially less interesting, public interest claims, due to the lack of or low compensation.

4.6 Possible solution offered by a (revolving) litigation fund

The market for commercial litigation funding has developed such that commercial funders, lawyers and interest groups know how to find and respond to each other. However, in the interviews and in the focus group, the high costs of the preliminary phase, in which a funder may not yet be involved, and the costs of settling these cases once a settlement has been reached, were pointed out. Possibly, a litigation fund could play a role in this. Furthermore, the interviews, focus group and expert meeting revealed that not all cases are attractive to commercial funders. This concerns certain general interest cases and cases in which the expected damages are small. The unpredictability of the current commercial finance market was also pointed out, as it is still developing and it is also still unclear how the courts will deal with it, while possible future stricter regulation could also have a negative impact. For now, the majority of WAMCA cases involve non-damages cases. As the analysis of the WAMCA register and interviews show, this category does not involve commercial third-party funding. Possibly, a litigation fund could also play a role in these cases. Whether a fund can be revolving depends on the sources of revenue and expenditure. What is important is that sufficient funds flow back into such a fund. This requires a mature collective action practice and more clarity on the presence of sufficient funding for WAMCA damages cases, as they will have to fill the revolving fund. A conclusion on this is premature at this point of time. The comparative law study also found that public litigation funds are not at odds with commercial third-party funding, but may actually benefit from the existence of healthy competition.

4.7 Litigation funds in some other jurisdictions

Collective litigation funds with which there is significant experience exist in Canada (Quebec and Ontario) and Israel. Different choices have been made in these countries, both with regard to the financing of the fund and the type of cases that are financed and type of costs that can be reimbursed. The most 'broad' litigation fund is Quebec's which, unlike Ontario's and Israel's, is not limited to public interest cases. In principle, all cases and types of costs, including lawyers' fees, are eligible for reimbursement when they cannot be funded by other means. The fund is fed by contributions from all collective actions, regardless of whether those cases themselves have used the fund. About 50% of cases receive reimbursement from the fund. The fund in Ontario does *not* reimburse lawyers' fees and the fund itself is funded by contributions from successful cases funded by the fund, with a standard 10% fee being levied regardless of the size of the funding or outcome. About 10% of cases is funded this way. Cases that contribute to legal development or the public interest may be eligible for funding. The 'overhead' of this fund is low, as it is run by volunteers, which can be seen as problematic for other reasons, such as lack of capacity and transparency. The Israeli fund is fed entirely by government funding and gives only a small contribution to (a large number of) public interest cases. This fund can be seen as a private mechanism with a public regulatory effect, as it enables public interest actions and/or the address of scattered damages, where public bodies and regulators also (may) have a role.

4.8 Pros and cons of a litigation fund in the Netherlands and possible design of a fund

Litigation funds are suitable when there is a gap in the funding landscape. This may arise due to a ban on contingent fees and/or be the result of a loser pays rule, where the plaintiff runs the risk of a more than token litigation cost awards and the funding sources available in collective actions are insufficient, as is the case in the Netherlands. Litigation funds are one way to fill this gap. Other ways from the surveyed jurisdictions include a no-cost-rule for the benefit of unsuccessful plaintiffs in collective actions and/or a discretionary power of the court to waive such a litigation cost order at the request of the losing plaintiff, if the case is one of principle and/or in the public interest. The advantages of a litigation fund are that it would also allow cases that might fall by the wayside because they are not attractive enough to commercial litigation funders to be brought and would make these cases less dependent on the market. As concluded in the expert meeting, enforcing compliance through collective proceedings also serves other than commercial interests, namely social, moral and legal interests. By extension, the potential contribution of a litigation fund to legal development (e.g. consumer law, privacy, environmental protection) was pointed out during the interviews. Possible drawbacks are that the time and costs involved in setting up and operating the litigation fund may exceed the expected benefits. This is related to the small number of cases, the interaction with commercial third-party funding and the complexities around and costs of operating such a fund. This practicality question is separate from the question of the need for a litigation fund.

4.9 Utility and necessity of a litigation fund

The research has shown that a wide variety of WAMCA cases have been brought and that the majority of these are non-damages cases. In terms of funding, it is clear that for damages cases, funding from commercial litigation funders is necessary given the high costs, and has been obtained for the time being, for the cases brought. There is no evidence that damages cases could not be brought due to lack of funding, but it is certainly conceivable that there are or will be cases that are not lucrative for funders due to low damages or too high risk. The situation is different for non-damages cases. For the time being, there is no commercial third-party funding of these cases and – after selection – they are funded from the class members' contributions and possible other sources (private donations or crowdfunding).

For the time being, a litigation fund seems to have added value mainly for small damages cases and non-damages cases. It should be noted that even for large damages cases, there may be certain drawbacks to relying on commercial third-party funding, especially if they are riskier and/or involve new legal questions. The question is whether, especially for public interest cases, the commercial market should determine whether or not a case can be brought with the necessary funding. There are also (economic) uncertainties in the rapidly developing funding market and future (European) regulation may affect further development.

Setting up a process fund is a complex matter. Choices have to be made regarding the financing of such a fund, which will require an initial or even more structural contribution from the government, partly in view of the as yet small number of damages cases. Choices also need to be made as to the type of cases and which costs should be financed. Finally, the establishment, organisation and maintenance of such a fund raise questions regarding embedding, expertise and research into the merits of the cases submitted, and also entail significant costs.

Based on the as yet limited experience with the WAMCA, in which no final judgments have yet been rendered in damages cases, the rapidly developing funding market, the as yet not evident difficulties in obtaining funding (in damages cases), as well as uncertainties surrounding (European) regulation, it

seems premature to proceed with the establishment of a litigation fund without further research at this time. However, the researchers recognise that there are uncertainties in funding and that in certain cases and in the preparation phase of cases there is a need for more options and – especially for non-damages cases – more structural funding. For a healthy collective action market and the success of the WAMCA, proper funding is key. However, part of the problems also seem to stem from the WAMCA procedure itself, or in the procedural uncertainties that exist for the time being. Furthermore, perhaps some of the funding problems could also be solved by other means.

Our conclusion can be summarised as follows. A revolving litigation fund that does not rely on public funds would at present depend entirely on commercial litigation funding and developments in the jurisprudence under the WAMCA. What is uncertain at the moment is whether sufficient damages are awarded, and whether the cost of funding is such that enough funds would remain to flow back into the fund. Also, maintaining such a fund presupposes some form of solidarity. The question is whether there is sufficient public support for this and also support among stakeholders. All in all, in view of all current developments both with regard to commercial litigation funding, and with regard to the WAMCA, the introduction of a revolving litigation fund seems premature at this point in time. Consideration could be given to explicitly recognise the possibility of *cy pres* so that experience can be developed with it in practice and insights can be gained into the size of remaining funds. Depending on the results, this could be followed up by the establishment of a litigation fund.

5. RECOMMENDATIONS FOR FOLLOW-UP RESEARCH

A major limitation in this study is the lack of a baseline measurement on the use of collective actions under the old regime, so that a proper comparison with the situation under the WAMCA cannot be made. A systematic empirical study continues to be relevant and necessary and could still be conducted, as earlier research does not provide answers to all elements relevant for the baseline measurement.

The present study could serve as a baseline for follow-up research on developments under the WAMCA. Also, in an estimated three to five years, it will be possible to say much more about the number and progression of WAMCA (damages) cases, the settling of damages cases and the application of the admissibility and other procedural requirements of the WAMCA. This will provide more insight into the relationship between damages and non-damages cases, the claimant interest groups, the amounts of damages awarded in collective actions, the funding and total costs of these cases and the application of WAMCA requirements in practice. There will then also be more insight and research into European regulations, in particular the application and interpretation of the Representative Actions Directive, any further regulation of commercial third-party funding, further developments in the funding market and any issues surrounding the funding of collective actions. Ideally, this will be both a quantitative and qualitative study, as interviews in particular help interpret the results of quantitative studies. For example, it remained underexplored in this research why damages actions are only brought by specialist (ad hoc established) advocacy organisations and are exclusively commercially funded. This is also an important follow-up research question.

Further research into the experiences in other jurisdictions with *cy pres* could clarify which possible drawbacks would have to be taken into account in the Dutch context if the mechanism as such were explicitly recognised under WAMCA.

Follow-up research is also desirable in regard of a number of alternatives to a litigation fund. Possible alternatives are: (a) abolishing or lowering court fees for certain categories of cases; (b) widening the scope of subsidized legal aid, so that representative interest organisations in collective actions are also eligible; (c) no litigation cost orders for the representative organisation in an unsuccessful action, in particular when commercial litigation funding has not been used; (d) the scope of a litigation costs order of the real costs for the benefit of the successful interest organisation under Art. 1018I paragraph 2 of the Dutch Code of Civil Procedure (DCCP); (e) allowing 'no win-no fee' agreements in collective actions. The last one in particular would require further investigation. For example, it is not clear why the successful experiment with no cure no pay in non-collective personal injury cases could not be extended to other areas and/or to collective actions. Furthermore, the role of legal expenses insurers in the scoping phase and/or in the subsequent preliminary phase of collective actions for damages is underexplored. More research on this is also desirable.

Should the revolving fund route ultimately be chosen with a limited government contribution, any state aid implications should be considered and it would be useful to identify exactly why similar initiatives in England and Germany did not take off at the time. Furthermore, Chile is a jurisdiction to keep an eye on in terms of experience with the recently introduced consumer litigation fund for certain interest groups.