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**International Association of Legal Expenses Insurance**



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RIAD is the International Association of Legal Expenses Insurance. It was founded in 1969 as "Rencontre International des Assurances Défenses" and unites today some 60 insurance companies from 16 European countries, South Africa and Canada. RIAD Members are specialised in the provision of legal expenses insurance and legal services and strive to facilitate access to justice for their clients who trust in them. The name RIAD stands for high quality of its Members' services which is guaranteed by the association's Code of Conduct.



## I. Preface

RIAD worked on many issues during 2006 and 2007 and of these two in particular stood out and can be expected to remain priority issues for the future. The first concerns better legal protection for victims of road traffic accidents in the EU and the second is about the regulation of legal services and the legal profession in the Member States.

When dealing with the 5<sup>th</sup> Motor Third Party Liability Insurance Directive the European Parliament raised the question of how litigation costs of road traffic accidents should be treated in cross-border cases. As national boundaries become less visible due to the continued strengthening of the Internal Market and the increasing mobility of EU citizens, it is paradoxical that car drivers still face uncertainty when trying to recuperate costs related to their legitimate claims for damages incurred abroad. The problem is a result of diverging legal provisions about who is responsible for the payment of litigation costs. Rules which may be coherent at national level can lead to injustices and inconsistencies in cross-border cases. Different solutions have been put forward such as the introduction of mandatory legal expenses insurance linked to motor insurance policies and the harmonisation of the notion of 'damages' (i.e. the inclusion of litigation costs as part of the damages to be compensated by the motor insurer of the wrong-doer).

RIAD is very much opposed to the introduction of obligatory legal expenses insurance. Such a scheme would amount to an additional financial burden on consumers without providing a sustainable solution to the problem. Moreover, regulators should seek to avoid potential conflicts of interest by ensuring that there is sufficient separation between insurance covering legal expenses and that covering liability. In failing to recognise the essential differences between these fundamentally different lines of insurance, a mandatory scheme would put essential principles in jeopardy.

An European-wide harmonisation of the concept of 'damages' bears more risk than benefit: the methods of providing compensation for litigation costs have developed and become embedded in their respective national legal systems and function only on the basis of an equilibrium inherent to each system. An EU-wide harmonisation would risk destabilising existing national schemes and could therefore impede victims' interests. The European Commission has decided to investigate further by studying the existing situation for compensation of victims of cross-border road traffic accidents and by evaluating options for improving protection for cross-border victims. The results are expected in autumn 2008 and RIAD hopes that they will provide a basis for informed discussion and decision about possible next steps.

The second priority topic for RIAD concerns regulation of legal services and the legal professions. It is an issue central to the guarantees of access to law and justice which Member States promise their citizens. In order to safeguard this public interest certain privileges are awarded to lawyers, key amongst which is the monopoly to conduct legal cases, meaning that Member States reserve this activity exclusively to the legal profession.

However, such privileges tend to restrict competition, limit consumer choice and have a high risk of rent-seeking behaviour. Legal expenses insurers, as large scale providers of legal services and as potential market

entrants, are seeking a genuine debate on whether there are better and more beneficial ways to regulate the market for legal services.

RIAD commissioned SEO Economic Research, an independent research institute with the University of Amsterdam, to research the economic impact of the regulation of the legal professions. According to the study it is not clear that access to law and the quality of legal services is better in those countries with higher levels of regulation for legal services. Thus, while the benefits of regulation cannot be proven it was found that regulation comes at a cost. RIAD see these study results as an important contribution to an informed policy discussion about more effective ways to regulate the legal services market. We look forward to continuing the debate with a range of stakeholders during the RIAD Congress on 11/12 September 2008 in Munich.

Solvency II, which will introduce new solvency rules for European insurers, is a very important matter which will have a significant impact on all insurers, regardless of their size, activities or corporate structure. Other issues on RIAD's radar include EU initiatives to improve the Internal Market for financial services, plans to introduce a common system of value added tax for insurance, changes to consumer protection rules and a number of projects to facilitate the provision of legal services.

RIAD members remain willing and able to offer their valuable expertise in support of the positive development of the European project. In commissioning a study into regulation of legal services and professions, RIAD is again demonstrating its active commitment to the process of European integration: legal insurers take their responsibilities seriously.



**Eric POUW** - RIAD President

**Antje FEDDERKE** - RIAD Secretary General





## II. About RIAD

### RIAD MEMBERS' LOCATION



RIAD is the International Association of Legal Expenses Insurance and represents almost 60 insurers from 18 countries. Four new UK members joined RIAD during 2006-2007. Three German members left during 2005-2006.

In 2006, RIAD member's gross premium income was €2,332m (with South Africa and Canada accounting for €27m). European RIAD members had a gross premium income of €2,305m. RIAD members represent approximately 35.6% of the EU-25 Legal Expenses Insurance Market.<sup>1</sup>

RIAD moved its office to Brussels in 2006 and registered in Belgium as "Association internationale sans but lucrative" (international non-profit

association). In so doing, RIAD is clearly demonstrating its intention to be fully recognised by European actors in the decision-making process and that it is ready to play an active role on the European and International stage.

RIAD members supply a unique and important insurance coverage, one which plays a significant role in the proper functioning of the judicial system and which guarantees access to justice for many citizens. Legal expenses insurance goes beyond the pure compensation of losses, offering more to the insured than coverage of risk. RIAD members actively support their clients with legal services such as giving advice and representation both out-of-court and in-court.

## III. Policy Developments in 2006 and 2007

### Improving the Single Market for Services

RIAD supports the European Commission's moves to complete the Single Market for services. Needless and costly regulations introduced by Member States under the cover of the 'general good' need to be tackled immediately and initiatives which stimulate the Single Market should be encouraged. Alternative redress mechanisms are one such way of building consumer confidence in the Single Market. These mechanisms strengthen consumers' rights and resolve disputes quickly and efficiently.

The free provision of services was central to the European Court of Justice's case of December 2006 (Cipolla, Macrino and Capodarte<sup>2</sup>). The court ruled that the prohibition on derogation from the scale of lawyers' minimum fees in Italy constituted a restriction on the freedom to provide services. Such restrictions may only be justified if they meet overriding

requirements relating to the public interest, such as the protection of consumers and the proper administration of justice, and if they are not disproportionate in relation to those public interest objectives.

Also in December 2006, the European Commission's conference on 'The Economic Case for Professional Services Reform' noted the desirability of reform in the area of professional services, using a number of economic studies as the basis for discussion. The impact of professional services regulation and the delivery of professional services in a low regulatory environment were considered.

In April 2007, the Commission's Green Paper on Retail Financial Services<sup>3</sup> set out the Commission's policy objectives in the area of retail financial services. It detailed the actions it considered necessary to unleash the full beneficial potential of an integrated EU financial market and called for

feedback from interested stakeholders. This was followed up in November 2007 with a Commission working document, 'Initiatives in the Area of Retail Financial Services'<sup>4</sup>, which identified several areas where the competitiveness and efficiency of the European market could be improved.

## Sector Inquiry into Business Insurance

In June 2005, the European Commission launched its inquiry into business insurance. Following a wide public consultation and an extensive fact-finding procedure via a number of targeted questionnaires, the Commission published its final report in September 2007.

The report raised concerns about the operation of two areas of business insurance. The first was the long-standing reinsurance and coinsurance industry practice involving the alignment of premiums. The Commission has called on the insurance market either to justify such business practices or to reform them.

The second major concern was centred on distribution channels and in particular the lack of transparency regarding remuneration and potential conflicts of interest for insurance brokerages, which might mean that prices have been inflated and choice reduced, in particular for SMEs. The Commission will further explore this issue during its review of the Insurance Mediation Directive.

## Insurance Intermediaries (Review of the Insurance Mediation Directive)

Intermediaries are an important distribution channel for insurance products in all Member States. The Insurance Mediation Directive of 2002 aimed to encourage an Internal Market for insurance intermediaries by setting up a legal framework which would ensure a high level of professionalism and consumer protection.

However, the Commission has since expressed concerns regarding the Directive's effectiveness and is launching a detailed analysis of the issues addressed by the Insurance Mediation Directive. High on the agenda is payment, with the Commission indicating that a lack of transparency regarding remuneration may lead to conflicts of interest.

## Litigation Costs for Road Traffic Accident Victims

As the volume of cross-border travel increases, the question of who pays the litigation costs related to claims for damages incurred in motor accidents abroad is moving up the political agenda. In the context of the revision of the Motor Third Party Liability Insurance Directive and in relation to the Rome II Regulation on the law applicable to non-contractual obligations<sup>5</sup>, the European Commission is examining specific problems arising from cross-border road traffic accidents and will present possible solutions based on the findings of two studies which are due to be published in August 2008 and autumn 2008 respectively.

In June 2007 a Commission report<sup>6</sup> on motor insurance concluded that voluntary legal expenses insurance cover is sufficiently available to victims of road accidents pursuing claims abroad, in at least 22 Member States. However in newer Member States, the markets, on both the supply and demand-side, have yet to develop sufficiently. The report observed that legal expenses insurance, by allowing the recovery of expenses regardless of the law applicable to an accident and irrespective of the result of the claim, provides a comprehensive and satisfactory solution for victims of road accidents occurring abroad. RIAD supports the Commission's conclusions and believes that the best way to promote legal protection coverage via voluntary insurance is by encouraging a legal environment which is supportive of entrepreneurial initiative and which allows demand to develop naturally. Attempts to impose solutions on the marketplace, such as mandatory legal expenses insurance schemes or harmonisation of the concept of 'damage', are not sustainable in RIAD's view.

The European Parliament continues to discuss how the Motor Insurance Directives could be taken further and MEPs have expressed concern about the legal protection available in the new Member States. Maintaining its close contact with the Parliament, RIAD will emphasise how important it is that any new initiatives avoid inadvertently creating conflicts of interests between liability and legal expenses insurers.

## Insurance Guarantee Schemes

Insurance guarantee schemes (IGS) are intended to protect policyholders in the event of an insurer becoming bankrupt, either by paying compensation directly or by securing the continuation of existing insurance contracts. However the lack of co-ordination between Member State guarantee schemes has been identified as an obstacle to the full functioning of the Internal Market by the European Commission.

They commissioned a study, published in January 2008, to look into the issue in more depth. The study assessed various policy options and identified harmonisation of national IGSs as the most promising option. Although the study acknowledged the direct costs associated with such schemes, i.e. the payments providing the guarantee and administration costs, it concluded that benefits in terms of consumer protection and market confidence would outweigh the costs. The Commission is now reflecting on the issue following a consultation process, which included a public hearing held in June 2008. A policy decision is expected by the end of 2008.

## Small Claims Procedure

The regulation to establish a European Small Claims Procedure will come into force as of 1 January 2009. It will apply to civil and commercial matters, and will speed-up, simplify and reduce the cost of cross-border litigation in cases where the value of the claim does not exceed €2,000. Litigants can use it as an alternative to national procedures. The procedural steps are standardised for all Member States, rendering it extremely user-friendly. The introduction of strict time limits and the improvement of cross-border enforcement of claims will enable consumers to enforce their rights more quickly and in a less costly fashion.

## Collective Redress

Collective redress is gaining political traction. A key criterion of collective redress is that a natural or legal person is entitled to advance a claim for individual damages on behalf of a multitude of consumers who sustained the same loss. The European Commission is currently scrutinising to what extent collective redress could facilitate access to justice.

From the legal expenses insurance perspective collective redress could be an efficient tool to allow a greater number of policyholders enforce their rights. However, RIAD is not convinced that a European-level initiative would adequately address the issue. Indeed, RIAD members are not aware of any market-led need or demand for such a European instrument.

In April 2007 the European Commission published a report by the University of Leuven on alternative means of consumer redress which included a comparative report on national systems. Various alternative conciliation proceedings were reviewed, including class actions. The Commission has since launched additional studies in order to get a more specific evaluation of the effectiveness of current national collective redress systems and their impact on the proper functioning of the Single Market. The subject continues to gather momentum, with concrete options being discussed in connection with infringements of EU competition law. In addition, the Commissioner for consumer protection, Meglena Kuneva, has stated that collective redress is crucial to pursuing consumer interests.

## Patent Litigation

The exploitation of patents has been identified as a strategically important area in the context of the EU's 'Lisbon Strategy', the EU leaders plan to make Europe the world's most competitive and knowledge-based economy by 2010. The Commission has been evaluating the legal expenses insurance market for patent holders. A report commissioned in 2003 had suggested an obligation for patent holders to take out legal expenses insurance. As the Commission was not convinced of the findings, a follow-up study was held and published in June 2006 which subsequently led to a public consultation on the 'Future Patent Policy in Europe'.

RIAD rejects in principle the introduction of a mandatory insurance scheme. There is not sufficient data available to begin offering such a product and the approach chosen by the consultant's report is unfeasible in respect of the proposed level of cover and for the calculation of premiums.

## VAT for Financial Services and Insurance

In November 2007 the European Commission proposed new legislation to modernise and simplify VAT rules for financial and insurance services, with the intention of helping to secure a level playing field for such services.

Although financial and insurance services are generally exempted from VAT, the exemption is not applied uniformly by the Member States and thus the European Court of Justice has frequently been asked to clarify

the legislative gap. As companies increasingly outsource key tasks, they face growing VAT costs on outsourced services and on purchases of goods that they can't deduct. This results in 'hidden' VAT charges to customers and, as it cannot be recovered by business customers, cascades through the system, increasing operating costs for EU business.

The proposal is to give financial and insurance undertakings the option of submitting their services to VAT. In this way it aims to create more certainty and security for all concerned by setting out clear modern definitions of exempted services.

## Solvency II

In July 2007, the European Commission launched its long awaited 'Solvency II' Directive proposal, a ground-breaking revision of EU prudential insurance law. The Solvency II project has two distinct levels; level 1 sets out key principles for the new system in the overarching Directive and level 2 being a series of detailed implementing measures which are flexible and able to reflect market developments.

Solvency II is structured on a three-pillar approach. The first pillar contains the quantitative requirements, including the two capital requirements, the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR), which indicate different levels of supervisory intervention. The second pillar contains qualitative requirements for undertakings, such as risk management as well as supervisory activities. The third pillar covers insurance supervisors' reporting and disclosure requirements.

Prior to the Directive's launch, development of the implementing measures was well underway. The Commission asked the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) to run a series of Quantitative Impact Studies (QIS). The latest, QIS4 ran between April and July 2008 and the results will be available in November 2008.

The Directive should be adopted by the European Parliament and the Council in 2009. The implementing measures should follow in 2010 and by 2012 the Directive should be transposed into national law.





## IV. RIAD Paris Congress (2006)

### With the growing judiciousness of society, the solutions of Legal Expenses Insurance

**Xavier Roux**, Director General, Assistance Protection Juridique, France

Following the memorable congress in Athens in 2004 and the seminar in Vienna in 2005, the French Section organised RIAD's 19th congress in Paris on 21/22 September 2006.

The congress focused on legal protection of citizens in an increasingly litigious society. The theme had a strong local resonance as France was in the midst of an ongoing debate between the Ministry of Justice, the representative organisations of lawyers and legal protection insurers.

When launching the conference to the assembled media, Eric Pouw, RIAD President emphasised the key role legal protection insurance plays in giving citizens access to justice. Xavier Roux, President of the French Section of RIAD, highlighted the balance that must be struck between the state and legal aid systems, the economic interests of the legal profession and the fundamental principles of insurability. He also explained how the services offered by legal protection insurers help to provide the necessary economic means for citizens to gain access to justice. A highlight of the Congress was the roundtable, moderated by RIAD Vice-President Hervé Lancelot, and which brought together a range of stakeholders for

a well-argued and thought-provoking debate. The topic was introduced in exemplary fashion by Martine Kaluszynski, Centre National de la Recherche Scientifique Grenoble, and it was illustrated by concrete examples from the Netherlands (Jan Moerland, D.A.S. Director of the Legal Department) and France (Myriam Bacqué, Centre de Médiation et d'Arbitrage de Paris). The European institutions also had their say, with strong contributions by Olivier Tell, European Commission, and Hans Peter Mayer, MEP. Hervé Mondange (Association Force Ouvrière Consommateurs) gave the consumer point of view, Sylvain Lebertre, barrister at the Milano Bar, represented the position of the legal profession, while Reinhold Gleichmann (AUXILIA Rechtsschutz-Versicherungs-AG, Member of the Board) illustrated that of the insurers.

Despite differing legal frameworks, there was a clear increasingly litigious societal trend throughout Europe and the discussion provided best practice examples from different markets on how to deal with the consequences of this trend. More details about the event are available from: <http://www.riad-online.eu>

The event was also memorable for its flawless organisation, good atmosphere and strong networking opportunities, key amongst which was the gala evening on a river boat on the Seine. Those who remained until Saturday, 23 September, got the opportunity to visit to the charming village of Barbizon and its famous art school renowned for such mid 19th century greats as Corot, Millet and Rousseau.

## V. RIAD Barcelona Seminary (2007)



### "A Glance into the Future – how can Legal Expenses Insurers prepare themselves?"

The RIAD Seminary 2007 provided an opportunity for a highly relevant reflection on future trends much appreciated by the 110 participating legal expenses insurers. Two experts kicked-off the discussion. Herman Konings, a trend watcher from Pocket Marketing nXt and David O'Connor, an actuary and consultant with Towers Perrin, gave a series of research-based insights into existing trends and their potential consequences for legal expenses insurance.

The speakers focused on communication strategies and techniques as well as the impact of broader societal changes (e.g. disintegration of families, changing living arrangements, increasing job mobility and flexibility). Shifting societal and market structures, time poor consumers and the rise of consumer protection issues were identified as the prevailing challenges. Delegates discussed the issues raised within small working groups which was followed by a plenary debate on how legal expenses insurers should address these strategic challenges.

The Seminary found that legal expenses insurance is well-placed to respond effectively to the changing demands of modern life. Unlike other insurance products, legal expenses insurance offers tangible services in addition to the provision of risk transfer. By supplying knowledge, legal expenses insurers help clients to find their way through the growing 'jungle of regulation' and so provide them with tangible benefits, alleviating

stress in an increasingly time constrained world. Insurers are also delivering an effective market solution which promotes access to justice whilst taking financial pressure off the public system.

In order to capitalise on these emerging trends the Seminary concluded that insurers need to have an unwavering focus on the customer. By fully understanding the demands of a changing society, legal expenses insurers' products and services will become increasingly relevant and appreciated by consumers. A quality offering needs to be customer-centric, for example, making sure that policies are comprehensible to their target audience by using plain and unambiguous language.

This approach requires that insurers continuously review products and services based on client feedback. Customer relationship management is at the heart of this approach. All of these measures aims to enhance customer confidence which is particularly important for a complex product such as legal expenses insurance.

When gearing-up for future challenges, representatives agreed that new communication technologies will be a key determinant of success. Younger generations are used to an accelerated pace of life, are comfortable communicating digitally and have come to expect rapid responses, be it in their private or commercial life. Adapting to this reality creates an opportunity for legal expenses insurers to employ new technologies to enhance the services they provide, re-introducing a personal touch into the customer relationship and re-connecting with customers and brokers.



## VI. Litigation Cost Coverage for Victims of Traffic Accidents



**Jan van der Burgh**, Manager Planning and Claims Management  
D.A.S. Rechtsbijstand Netherlands

### Background

The Motor Insurance Directives are a fundamental element underpinning the free movement of vehicles in the European Union. With the first three directives, the EU took major steps towards establishing a Single Market

in the field of motor insurance. These directives oblige all motor vehicles to be covered by compulsory third party liability insurance (MTPL) and led to the abolition of border checks for insurance. They also guarantee greater protection for victims of accidents, including those caused by unidentified or uninsured vehicles. All passengers in the vehicle are covered by this type of compulsory insurance.

Furthermore, the Motor Insurance Directives provide for a mechanism to compensate local victims of accidents caused by vehicles from another Member State. This mechanism is built upon the private sector network of bureaux and Green Card System (COB – Council of Bureaux), set up by insurers.

The 4<sup>th</sup> Motor Insurance Directive completed the system by establishing an efficient mechanism for the quick settlement of claims for accidents which take place outside the victim's Member State of residence ('visiting victims').

In 2006, the European Commission carried out a study on the effectiveness of the claims mechanism. The main conclusion was that roughly half of the respondents who had had a traffic accident knew that there was a representative of the insurer of the liable party in their home country. In most cases the respondents had been informed of this by the insurer. Of those having had dealings with the representative, roughly half stated that they were satisfied with the way the claims were handled.

In its first reading of the current 5<sup>th</sup> Motor Insurance Directive the European Parliament wanted to increase the scope of motor insurance cover to include the cost of legal proceedings. This would have included various costs incurred by a victim of a car accident such as the cost of legal and technical experts, out-of-court legal consultations, legal representation and court costs. The amendment was rejected.

During the second reading, the European Parliament threatened to reinstate the amendment to include legal costs. A compromise was reached when the European Commission agreed "that consumers would benefit from increased opportunities to obtain insurance coverage for the necessary and appropriate costs of legal proceedings following motor vehicle accidents within the European Union"<sup>7</sup> and undertook to study the issue in more detail and to report back to the European Parliament and the Council. The Commission subsequently launched an examination of the availability of voluntary insurance contracts for legal expenses and the impact of such insurance cover on the cost of premiums for policyholders in Member States.

### 5<sup>th</sup> Motor Insurance Directive

The 5<sup>th</sup> Motor Insurance Directive, published in the Official Journal of the EU in June 2005, is due to be transposed into national legislation by 11 June 2007<sup>8</sup>.

Member States are obliged to guarantee minimum insurance cover for personal injuries of €1,000,000 per victim or €5,000,000 per accident, regardless of the number of victims. For damage to property, there is a minimum amount of €1,000,000 per accident (also regardless of the number of victims).

Member States have the option of utilising a 5 year transition period to adapt local coverage levels. Within 30 months of the Directive's implementation, however, every Member State has to be in a position to guarantee at least half of the above-mentioned minimum amounts.

Every five years following the entry into force of the Directive, the minimum coverage levels will be reviewed and adjusted if necessary.

For only a very small percentage of accidents (typically less than 0.1%) does the compensation paid by insurance undertakings reach the minimum level of cover as laid down in the existing directives or the other levels set in some Member States.

In some Member States minimum amounts of cover do not exist at all (unlimited coverage system) or exist only for property damage. The majority of Member States with minimum amounts of cover have set them at levels higher than the minimum established by the existing directives.

Although the impact on the insurance business of the new minimum amounts will be small, the 5<sup>th</sup> Directive does provide solutions to a number of problems that arise frequently. This is the case, in particular, for:

- the growing demand for motor insurance cover for pedestrians and cyclists.

Under the Directive, insurance shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law;

- the large number of people (e.g. students, workers residing temporarily abroad and individuals with secondary residences) who complain about the difficulties of finding insurance for a temporary stay in another Member State;
- individuals wishing to purchase a new or second-hand car in another Member State who encounter difficulties in finding short-term insurance cover before the vehicle is registered in the country of importation; and
- motorists wishing to obtain a statement from their insurer relating to their claims record in order to negotiate a contract with another insurance undertaking.

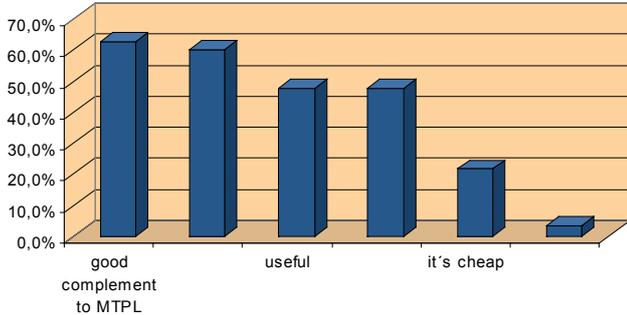
## Study on Legal Expenses Insurance

During April/May 2006, the European Commission carried out a study of legal protection insurance among EU citizens. From a total of 201 responses, 161 (80%) were from private individuals and 40 (20%) were from professionals representing clients.<sup>9</sup>

Of the respondents, 57% had (voluntary) legal protection insurance, 35% did not and 7.5% didn't know. More than 76% of respondents indicated that information on legal protection insurance was available to them; the other respondents said that such information was unavailable or that they don't know if it was available.

When asked why they had taken out legal protection insurance (LPI), the majority of respondents highlighted that it was a good addition to their motor insurance against third party liability (MTPL) and that it provided access to justice. Almost half responded that it was a useful insurance which made them feel more secure. Figure 1 indicates why respondents opted for LPI.

**Figure 1: Reasons for buying legal protection insurance**



Although the majority of the respondents have never had a traffic accident which required use of their LPI, 25% have had such an experience. A large majority of these (60%) were reasonably or very satisfied with their insurance cover. The main advantages reported were that it saves money by negating the need of the insured to engage their own lawyer and external experts (74%) and that good advice was given (50%).

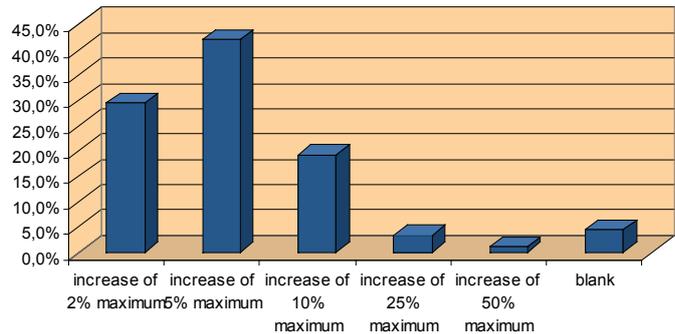
The less-satisfied respondents stated that the policy conditions were unclear (22%) and that the use of the insurance was inconvenient or time-consuming (16%).

In answer to the question of whether LPI should be made compulsory, the majority (58.7%) stated that it should remain voluntary. Of the 35.3% of respondents who felt that such insurance should be made compulsory, most (76%) believed that legal protection insurance should be part of the MTPL. Almost 90% said that such insurance must offer full cover for costs, both in and out of court.

If the inclusion of LPI in the MTPL were to lead to an increase in premiums, 44% of the respondents stated that they would still choose this combination. The remainder are opposed or weren't sure.

Those in favour were asked how much of an increase they would be willing to pay. Figure 2 indicates that a premium increase of up to 5% would be acceptable to the majority of respondents.

**Figure 2: Acceptable increase of premium**



Similar to the majority of respondents, RIAD is also in favour of the provision of LPI on a voluntary basis. As specialists in this line of business RIAD members offer road accident victims their expertise and support them when their claims are pursued. Thanks to a combination of specialised knowledge and skill, insurers often allow disputes to be settled amicably, out of court, thereby preventing unnecessary proceedings and reducing the overall societal cost. In this way, RIAD members provide a significant contribution to the welfare of their customers. Voluntary LPI coverage is the best way to achieve full cover and the avoidance of gaps.

It is important to recognise that MTPL and LPI have diverging aims and mechanisms and that they serve different interests. Liability insurance compensates damages caused by the insured (the liable party) to third parties (the victim), whereas LPI supports the victim, providing the policyholder with extensive legal services. Thus, MTPL and LPI often stand on opposite sides of the fence; with such clearly opposed underlying objectives, the combination of these insurance lines into one product could lead to considerable conflicts of interests, with an impact on all parties<sup>10</sup>.





## VII. The European Services Directive



**Dr. Andreas Wetzel**, Executive Assistant to the Board of Management, D.A.S. Germany

After much political wrangling, the European Services Directive finally entered into force on 12 December 2006. The Directive is intended to dismantle bureaucratic obstacles, intra-state hindrances and to improve the free flow of services throughout the EU, with a view to creating a real Internal Market for services.

Of particular interest to legal protection insurers was the item in the draft Directive referring explicitly to the liberalisation of legal advice. This provision came up against stiff resistance from the legal profession during the legislative process. In the end Member States decided that existing legal monopolies were to remain intact, asserting national interests over the free movement of services.

Whereas many services can now move freely, legal service providers must still heed to their national borders. It's a pity that the EU has capitulated to national partitions of the marketplace – it's a real opportunity wasted!

From RIAD's perspective, there are positives to be drawn. The gathering rain clouds were detected early, the legislative process was monitored intensively, and our action team tackled the issue intensively, leading the debate with EU representatives. The experience demonstrated, once again, the importance of having a Brussels representation ready to promote insurers' interests.

As legal services are included in the scope of the Directive, it is clear that they do not enjoy a special status and that, in principle, they do not belong to any other category. It may also be deduced from the Directive that legal practice and legal advice are not necessarily connected with each other. At any rate, the Services Directive does not entail any explicit deterioration for legal protection insurers.

The consumer has been the real loser in this process. Those who require Europe-wide legal expertise have not been best served: after all, it is not lawyers who need protection, rather it is those seeking legal assistance that deserve relief. That said, the Directive is otherwise consumer-friendly.

So, where do we go from here? The Directive is due to be implemented by individual Member States by the end of 2009. This process should be watched closely. It is conceivable that elements of the Directive violate EU constitutional law or are not in line with the case law of the of European Court of Justice. The final word on freedom of services has yet to be spoken.





## VIII. Professional Services and the EU



**Jan Moerland**, Head of Legal Department,  
D.A.S. Netherlands

The European Commission is of the opinion that professional services form an integral part of the economy, influencing competitiveness in all sectors, by providing essential services for businesses and consumers.

The Commission is examining whether current regulation of the professional services sector is the most efficient and least restrictive of competition. Its work focuses on six professions: lawyers, notaries, accountants, architects, engineers and pharmacists.

The Commission's initiative seeks to ascertain whether better regulation could help to drive economic growth and deliver better services and value. RIAD monitors EU developments concerning the legal profession closely because of the potentially large impact on the business of RIAD members.

A study undertaken for the Commission in 2003 (Economic impact of regulation in the field of professional services in different Member States. Study for the European Commission, DG Competition by Institut für Höhere Studien (IHS), Wien, January 2003) found high levels of restrictive regulation which distorts competition and pricing. To RIAD members, this outcome was no surprise. In many of the countries in which RIAD members are active there is a lack of competition in the market for professional legal services. The result is that Legal Protection Insurers and the public pay too much for such services.



The Commission has since adopted two reports on the subject: the 'Report on Competition in Professional Services' from February 2004 followed by 'Professional Services - Scope for more reform' in September 2005.

The reports recognise that there are legitimate arguments in favour of certain regulations for professions. However they emphasised that restrictive regulations should only exist where they provide an effective and proportionate means of protecting consumers. The Commission urged all interest groups to make a joint effort to reform or eliminate those rules which are unjustified. Regulatory authorities and professional bodies were invited to voluntarily review the existing rules to ensure that they serve the public interest, are proportionate, and are truly necessary for the good practice of the profession.

The Commission has sought to reach out to the professional bodies and all other interest groups, in particular consumer organisations, to discuss reform. Although the EU's Competition Commissioner acknowledged that change will be gradual and incremental, the Commission remains committed to wide scale reform and continues to work towards this goal.

RIAD participated in a major Commission conference, organised under the Finnish Presidency of the EU which was held in Brussels in December 2006. 'The economic case for Professional Services Reform', brought together policy officials responsible for regulating the professions in Member States and representatives from European-level professional bodies. The aim of the conference was to examine the case for the reform of professional services. A highlight of the event was a first public debate on the preliminary findings of a study commissioned by DG Competition into the impact of professional services regulation on the functioning of the EU conveyance services market. Another insightful session looked at the Finnish experience of delivering professional services in a low regulatory environment and the Italian experience in reforming professional services regulation.

RIAD will continue to follow the developments in this field very closely.



## IX. The Illusion of Mandatory Patent Litigation Insurance



**Gustaaf Daemen**, Chief Executive Officer  
D.A.S. Belgium

Within the context of the EU's Lisbon strategy, whose objective is to make the EU the world's leading knowledge-based economy by the year 2010, one can only applaud the Commission's desire to improve and thus promote the registration and protection of European patents.

One of the methods for making the European patent more attractive when compared to American, Japanese or other national schemes could be the offer of legal expertise both at the time of the original registration and afterwards in the event of possible violation and/or dispute about the validity of a patent.

Such legal expertise, which can be offered primarily via specialised lawyers and other experts, is a costly matter. For small and medium-sized companies (SMEs) this can be prohibitively expensive, and thus the Commission fears that European innovation could be lost as SMEs refrain from applying for patents.

It is within this framework that the idea of a special Legal Protection Insurance for this specific risk has been put forward. To date, the insurance market has not been particularly eager to offer such a policy because of technical insurance reasons, such as the absence of accurate and reliable statistics for this sector, and for commercial reasons, due to the lack of real demand from the marketplace.

European insurers strongly support the objectives of the Lisbon Treaty and have been involved in a number of initiatives which aim to make it a reality.

In 2006 RIAD teamed up with CEA's (the European Insurance and Reinsurance Federation) Legal Assistance Insurance Committee and constructively engaged in discussing proposals and studies regarding patent litigation insurance.

Despite best efforts, technical and economic obstacles remained however and so a new study was launched by the European Commission.

The resulting June 2006 study by CJA Consultants Ltd delivered a 'miracle' solution – by making it obligatory to obtain legal protection insurance when registering a new patent, patent litigation insurance would become viable!

A joint Position Paper from CEA and RIAD gave the insurance practitioners' view to the miracle solution. Submitted to the Commission in December 2006, our conclusion was emphatic "a mandatory scheme for Patent Litigation Insurance should not be considered further".

The interested reader can find the full text of the paper at the RIAD website:  
<http://www.riad-online.eu>

In our subsequent contacts with the Commission we have sought to use our expertise as legal assistance specialists to highlight solutions with real potential. Alternative Dispute Resolution (ADR) mechanisms, such as mediation, should be promoted as this approach increases the affordability and consequently the accessibility for those SMEs who require legal protection for their innovative ideas.

In any event, the position of the insurance industry regarding a mandatory scheme for Patent Litigation Insurance is more than clear: it is illusory and unrealistic.





## X. Solvency II - the Legal Expenses Insurance Viewpoint

**Dr. Bernd Jäger**, Chief Actuary VICTORIA Versicherung AG, DAS Rechtsschutz Versicherung, Germany

The supervision of insurance is being fundamentally transformed in the context of the European Union's Solvency II project. A goal of the reform is to implement an EU-wide, uniform, risk-based system for the protection of the insured parties. The current indications are that the draft Solvency II Directive, launched in the summer of 2007, is not expected to enter into force (with its related implementing measures) before 2012. Solvency II is organised in three separate pillars, focusing on: minimum capital requirements; supervisory verification procedures; and market discipline. This article focuses on the first pillar which will establish the minimum capital requirements. Current solvency regulations are based on simple key figures which do not take company-specific risks into account. This will change under Solvency II: the higher the risk to which a given insurance company is exposed, the more funds it will be required to hold under the new capital requirement rules. An individual Solvency Capital Requirement (SCR) will be calculated for each company. This SCR corresponds to a level which enables an insurance company to sustain considerable unforeseen losses within a year. Insurance companies will determine their SCR by means of a 'standard model' or, if necessary, by means of an 'internal model'. In special cases supervisory bodies can require the use of an internal model if they suspect that the standard model does not adequately reflect a company's specific risk situation.

### Risk categories in the standard model

The exact form the risk categories will take under Solvency II has yet to be decided. On the actuarial side we draw a distinction between insurance-related risks, (namely, premium risk, reserve risk and cumulative/disaster risk) and other risks. Capital investment risk is usually modelled in detail with operational risk represented by a lump-sum supplement. In the solvency models that have been prevalent to date, the capital investment and operational risk categories have been addressed only indirectly via 'capital market stress -tests'. The modelling of capital market risk under the new solvency system will be significantly more time-consuming than the capital market stress -test. In overall terms, the new Solvency II framework ensures that the likelihood of an insurer being ruined during the year is no more than 1 in 200. It is based on a 99.5% value at risk, which corresponds to the worst loss one would expect to occur in a single year over the next two hundred years. The exact calibration has yet to be determined, as options are being analysed in the Quantitative Impact Studies being run by CEIOPS. The final results will be incorporated into one of the Directive's implementing measures.

### Impact on main insurance-related risk categories

The premium risk describes the danger that the following year's premium income will not be sufficient to cover the losses and costs that will be incurred at that time. The model used for this purpose is volatility of the loss quotas over the last 15 years. Since legal expenses insurance in general tends to have low fluctuations in results, there is a small fluctuation value (standard deviation). The total risk is then obtained as the product

of the net premium and this degree of fluctuation. It should not be particularly difficult for a legal expenses insurer to procure the data (net loss expense quotas for the last 15 years) needed to calculate the fluctuation. Reinsurance protection is taken into account to the extent that all considerations are on a net basis.

The reserve risk describes the danger that the loss reserves set aside for losses already occurred will not be sufficient to definitively cover the actual cost of the losses. The so-called 'cost of capital' approach is currently favoured as a model for this purpose. The expected value of the future loss payments is considered to be the sum of the underlying reserve portfolio plus a risk margin. The risk margin corresponds here to the cash value of the additional capital cost requirement of a purchaser of the loss reserve. There may possibly be problems with data procurement regarding loss payments. Here too, however, the legal expenses segment has a great advantage over many other branches of insurance. In legal expenses insurance there are a large number of homogeneous losses which enable one to make a very stable estimation of reserves (and thus one which is not subject to much fluctuation). Moreover, lump-sum reserve allocation is widespread in legal expenses insurance. This means that the corresponding knowledge of reserve allocation and the required data on volatility estimation are generally at hand. The over-valuation of reserves can be assigned to existing own funds; any amounts not covered reduce these funds accordingly.

The cumulative/disaster risk describes the risk of major occurrences (which have not yet been observed in the data; e.g. extreme storms, large fires, etc.). In my opinion this category of danger does not exist for legal expenses insurance. Accumulations are only conceivable to a very limited extent, owing to the capacities of the legal system and the possibilities of test cases. Very large losses are virtually impossible owing to the visibility of the normal legal channels and to insured sums that are low compared with other sectors. This means that no separate modelling is necessary in this area.

In summary, it can be stated that under Solvency II a significantly higher expenditure will be necessary to calculate the venture capital. Smaller insurers may find that they have higher solvency capital requirements as a result of the greater fluctuations that are usual for smaller portfolios. In addition, many parts of Solvency II describe only the principle (e.g. for reserve risk); the practical implementation of these principles requires additional (actuarial) capacities. Internal models provide an opportunity to present an undertaking's individual situation in a more risk-adapted manner, noting in particular the use of reinsurance programmes. However, the potential for improvement here could probably be classified as low. Furthermore internal models need to be approved by the competent supervisory authorities and they have to be used to steer the company.

As many issues in the Solvency II process are still under discussion, it is too early to make any conclusive statements regarding the true impact of the new regime.



## XI. Focus on National Markets

### 1. Reform of Legal Protection Insurance in France

**Xavier Roux**, Director General, Assistance Protection Juridique, France

Legal protection insurers have had to adapt to a variety of significant changes brought about by the adoption of a new law in France on 21 February 2007.

An article added to the Insurance Code redefines claims outstanding. The definition, intended in theory to specify the date of the claim, will create the obvious problem of diminishing the unforeseeable elements which are central to any insurance contract.

Another measure specifies that consultations or pleadings prior to the notification of claim may not justify the forfeiture of coverage, even if such prior actions were not financially assumed by the insurer.

A third article requires the presence of a lawyer, in the amicable phase, when the opposing party is defended by a lawyer. This is an effort to restrict the possibility of insurers initiating an amicable settlement of a dispute. The legislator ignored amendments suggested by the insurance industry which would have put the consumer at the heart of the provision by letting the insured choose, rather than automatically impose the presence of a lawyer.

Two additional articles specify that the insurer may not provide details of a lawyer to the insured without a written request from the latter, and fee agreements between a lawyer and an insurer are also prohibited. Consumer associations are in agreement that such provisions favour lawyers and are to the detriment of insurers and their clients. In the long run an increase in the cost of insurance premiums can be expected as a result of the new law.

### 2. All Change in UK Legal Services

**Paul Asplin**, Chief Executive Officer D.A.S. Great Britain

In July 2003, the UK Government announced a review of legal services, to be conducted by Sir David Clementi, an accountant, the Chairman of Prudential Assurance and former deputy governor of the Bank of England.

The review was to focus upon the regulation of lawyers and the current restrictions on the ownership of law firms, and was linked to a simple question; what is best for consumers?

The report was published in December 2004 and recommended a new framework for the regulation of lawyers, an improved complaints system and alternative business structures for law firms that would allow investment by non-lawyers.

Until now, solicitors have been regulated by their own professional association, the Law Society, who are also responsible for complaints handling. The solicitor's monopoly is kept alive by laws which prohibit non-lawyers from owning law practices.

According to the National Consumer Council, just 44% of consumers currently have a favourable opinion of lawyers, whilst the Law Society receives one complaint for every six solicitors. The Law Society's Consumer Complaints Service missed four out of seven of its performance targets. Clearly, the Government had decided that things must change. In the 21<sup>st</sup> century, self regulation and restrictive practices should be swept away. As part of the Government's drive towards affordable and accessible legal services, ownership restrictions should go too, to improve investment and bring to the legal profession the management and marketing skills of consumer-friendly companies.

So, in May 2006, the Government introduced the Legal Services Bill. The Bill introduces a Legal Services Board to oversee regulation. Although the Law Society will continue to be the 'front line' regulator, it will now be overseen by the LSB. Moving towards this, the Law Society has already renamed its regulatory division as the 'Solicitors Regulation Authority' in an attempt to distinguish its dual role as solicitors champion and self regulator.

Redress for complainants will now be down to a new Ombudsman scheme, greatly simplifying the current complex system and falling in line with the type of scheme operated within the insurance industry for many years.

Most controversial, however, is the decision by the Government to allow so-called 'alternative business structures', in other words, non lawyers will now be allowed to own law firms. The Government is convinced this will improve the cost and quality of legal services as major consumer brands enter the market for legal services. Undoubtedly, this is a fair assumption. Many legal services in the UK are already commoditised; conveyancing, lower value personal injury claims, even divorce are good examples. Most of these cases are already run very efficiently by larger firms with state of the art IT systems.

In fact, in some ways, the Government has only reacted to reality. The current restrictive ownership rules can easily be circumvented and in reality dozens of law firms are already owned by non lawyers such as insurers, insurance brokers and motoring organisations.

Predictably, the legal profession has not been too happy about the changes. Self regulation is a happy state of affairs and certainly in the legal protection insurance market, solicitors have been able to sell insurance without regulation from the Financial Services Authority, giving them a significant advantage over fully regulated firms who, it must be remembered have not (at least in theory) been able to own law firms themselves.

Whilst it is inevitable that some of the smaller law firms who have hitherto survived in a protectionist bubble will be swept aside by the new competition, it seems equally inevitable that overall the typical consumer will benefit from fairer and better regulation, greater competition and lower prices.

For legal protection insurers, the consequences are significant. Major companies spend millions of pounds every year with law firms. In future, much of that work will go to in-house companies geared up for volume



work. There will be significant savings in costs and the opportunity to offer a wider range of legal service products to clients, not to mention the benefit of not having to pass a client to a third party lawyer when an in-house claims solution is not possible.

With the prospects of significant upheaval ahead, lawyers continue to fight a rearguard action against the inevitable changes, but the Government have made it clear that change will happen, come what may. Somewhat predictably, there has even been a negative reaction from Germany where a threat to ban non lawyer owned UK firms has been issued. In reality, such a ban will be circumvented by forward thinking firms, just as the current rules already have been in the UK.

There is a strong body of opinion that suggests that the introduction of new business skills and new capital will not only create a better market for legal services in the UK, but give UK firms a significant advantage in the global marketplace.

Whatever happens, the UK legal services market will be unrecognisable from its current state in a few years time.

### 3. Liberalisation of Legal Fees in Italy

**Pierluigi Lissandron**, Head of Legal Department, D.A.S Italy

A Law Decree of August 2006 which applies to intellectual and independent professional activities, repealed legal and regulatory measures setting compulsory or minimum fees and prohibited the establishment of compensations linked to the achievement of the goals being pursued.

These modifications have not been greeted with unanimous enthusiasm. In particular, some in the legal profession have pointed out that the abolishment of fixed and minimum fees would certainly have consequences on the quality of professional services. There is a high, or some may say excessive, number of Italian lawyers. These legislative changes might induce certain professionals to charge very low fees, destabilising the legal market to the detriment of the whole legal class.

Such estimations might be confirmed as soon as the effects of other legislative changes to the 'Code of Insurance' are fully appreciated.

The changes mean that in most road accident cases the damaged party will no longer have to seek compensation from the liable party (and from that party's insurance company), turning instead to their own insurer to obtain damages. The latter, after having verified the liability in the road accident, will pay damages in advance to the insured person, and will then be refunded by the insurer of the liable party through a specific procedure.

However a more important aspect of the new law is that although the damaged party's insurance company will pay the compensation, it will not refund any legal expense for the pre-trial phase. Legal expenses insurance thereby becomes an essential instrument and the best option for the damaged party, as it can provide professional assistance and allow the insured to avoid a tiresome search for the least expensive legal adviser.

For more information: <http://www.parlamento.it/leggi/06248l.htm>  
<http://www.parlamento.it/leggi/deleghe/05209dl.htm>  
[http://www.giustizia.it/cassazione/leggi/dpr254\\_06.html](http://www.giustizia.it/cassazione/leggi/dpr254_06.html)

### 4. Belgium's Onkelinx Initiative: Tax Relief for LEI

**Tom Vanwambeke**, Manager Claims & Production - Compliance Officer  
 – Company Counsel Euromex N.V, Belgium

Access to law and to justice is a constitutionally guaranteed right in Belgium and is also stipulated in the European Convention on Human Rights. A number of policy norms have been developed by the Belgian Government in seeking to put this right into effect, including tax relief for insureds taking out private legal assistance insurance.

Following an ill-conceived proposal for mandatory legal assistance insurance to be included in private civil liability policies, which was widely criticised by all stakeholders, the Socialist Minister of Justice, Ms Laurette Onkelinx, then asked the bar associations and the insurers to draw up an alternative solution.

The resulting counter-proposal was to increase voluntary insurance cover by offering an extensive guarantee of private legal assistance supported by a tax incentive, in the form of a tax credit of €175. The proposal was not adopted however as the Government felt that the budget commitment was too great.

In September 2004 a court of appeal ruling found that it should be possible to recover the costs of legal assistance (the fee of one's own lawyer) from a liable party. This ruling was influential and raised the concerns of the bar associations and government officials, who felt that it would make access to justice even more difficult, as it meant that a person seeking justice would now also have to pay the costs and fees of the opposing party's lawyer, if the case was lost.

The bar associations then made a proposal for a greatly increased payment for judicial procedure. This lump-sum payment would cover compensation for the costs and fees of the lawyer of the winning party and has to be paid by the losing party. This proposal is favoured by the legal profession as it sidesteps discussion of fee size and the possibility of introducing sliding scales.

In April 2006 the Court of Arbitration (the Belgian constitutional court), extended the scope of the precedent set by the court in 2004 and the Belgian Government was consequently tasked with drawing up a system in which all or some of the costs of the losing party could be recovered regardless of the legal relationship. The previous proposal of the bar associations naturally came under consideration, leading in 2007 to an adaptation of the Judicial Code and the Code of Criminal Procedure.

In the meantime, the government and the insurance sector for private legal assistance insurance reached an agreement on the plan to encourage greater legal protection insurance. The insurance policy benefits from a partial exemption from charges (of 9.25%) if it has a specific minimum



content. The insurance industry body, Assuralia, drew up the specifications for such a policy. A guide price of €144 or €12 per month was specified, which ultimately is also the maximum sum eligible for the charge exemption. The Government's budget contribution per policy is thus €13.32. The Royal Decree confirming the agreement was delivered in January 2007.

To policies contain an extensive all-risks guarantee, with a minimum guaranteed sum of €5,000 and €12,500 for civil redress and criminal defence. An intervention threshold (required minimum dispute) of €250 to €500 may be provided for, depending on the guarantee made. In addition, an exemption of €250 may be provided for, unless a dispute is settled in an alternative way (e.g. mediation). In the case of divorce there is only intervention for a first divorce, provided this is settled by mutual agreement. Motor vehicles and building disputes are excluded.

The fiscally encouraged product is principally offered by specialist legal assistance insurers. There is still some hesitancy among other insurers. Some large insurers have, however, already let it be known that they will not be making any great effort to commercialise the product. These insurers are not willing to invest directly in a product which has not yet

been demonstrated to be cost-effective. There is in effect, a maximum premium of €144, while there is a total freedom on the expenditure side (costs and fees of the lawyers).

The question remains whether Belgian citizens will take out this product in large numbers. In the negotiations between Assuralia and the government there was no consultation with the distribution sector (insurance intermediaries), the channel which has the largest market share of non-life insurance in Belgium. The law explicitly provides for an annual assessment by the Government, the insurers and the representation of the lawyers. The lawyers are already calling for greater fiscal incentives and an extension in scope to cover building and labour law.

If the initiative fails to stimulate insurance cover, it will not be as a direct consequence of the pricing or content of the product. It will rather be the consequence of the continued lack of awareness regarding the advantages of good legal assistance insurance. The joint initiative by the government and the insurance sector has the merit that it has at least resulted in greater product awareness through the media. Further work is needed, however, on both the commercial and public education fronts.



## XII. Study by SEO Economic Research

In the spring of 2007 RIAD commissioned a study by SEO Economic Research, an independent research institute with the University of Amsterdam, which sought to answer the question: what effect does the regulation of the legal profession have on access to justice?

In launching this initiative, RIAD is looking to stimulate a reasoned debate about the required degree of regulation of the legal professions. The goal is to positively influence policy making it more contemporary and flexible and thereby improving access to justice.

The study was conducted in five phases. Firstly, the research topic was defined, based on a questionnaire, of the current regulation of legal services in 12 countries. The scope of the study was limited to civil law. The theoretical framework was then developed (economic rationale for government intervention). Thirdly, a questionnaire investigating lawyers' charges (and overcharges) in court cases was issued. A synthesis was subsequently made to analyse whether it is possible to explain price differences between legal services by linking them to regulatory differences. Finally, a report was drawn up.

SEO's theoretical analysis shows that there are no economic grounds for the current restrictive regulation of legal services. The report found that a high level of regulation is not necessary to achieve sufficient access to law. Moreover, the report states that, from an economic perspective, the

burden of proof rests on the government (or bar associations) to demonstrate how increased regulation creates net benefits for society. While the report clearly uncovered the cost of high levels of regulation, the benefits were much less apparent.

The SEO study had to contend with a data poor environment and with judiciary systems which are far from similar. Nevertheless the key figures presented in the report reveal some remarkable differences between countries. The report details the mix of government regulation, self regulation and private regulation currently in place and provides a useful comparison of the level of regulation for three important regulatory instruments (entry restrictions, restrictions on fees, and restrictions on advertising).

The SEO Report is a key reference point when considering the likely effects of opening the legal services market to more competition. Based on this robust study RIAD is seeking to start a policy discussion. RIAD will invite all stakeholders to begin an informed dialogue about the required degree of regulation.

Believing that new approaches to regulation could benefit all stakeholders, RIAD wishes to move the debate on from simple methodological aspects and forward towards a constructive and fruitful dialogue about truly beneficial regulation of the legal professions.



## XIII. Planning 2008

### Reforming regulation of the legal profession and improving access to law

The results of a major study, commissioned by RIAD and conducted by SEO Economic Research, provide a platform for informed policy discussion on a key issue that will dominate RIAD's work in 2008. The study, which was launched in June 2008, provides an economic perspective on the impact of regulation on access to law. It found that high regulation is not necessary to achieve sufficient access to law. The results indicate that the net benefits of (high) regulation are unclear and that regulation comes at a cost. Governments need to justify current levels of regulation by demonstrating the social benefits outweigh the social costs. RIAD considers that the study is a valuable contribution to any discussion about reform of the legal services and professions; reform which would seek to regulate in a more beneficial and efficient way, enhancing consumer choice and improving access to law. RIAD will proactively promote discussion of the issues raised by the economic study.

### RIAD Congress 2008

Reform of the regulation of the legal profession will be high on the agenda of the RIAD Congress 2008, which takes place on 11/12 September in Munich. RIAD has invited all stakeholders - legal profession representatives, legal protection insurers, public sector representatives from national and European institutions, consumers and other interested parties - to discuss how regulation of the legal professions and services can be made optimal for those seeking justice. While there undoubtedly is a public interest need for regulation, delegates will be asked whether it would not be better to implement regulation which opens the legal services market to more competition, lowers the price of access to law and gives more freedom of choice to consumers. The debate will consider how all stakeholders could benefit from increased competition, as well as the important role of legal expenses insurance in providing routes to justice for consumers in different markets.

### Collective redress

The European Commission is evaluating the functioning of national collective redress schemes and possible EU initiatives in this respect. RIAD has contributed actively to this European-level discussion of collective redress schemes. Although such mechanisms may cut costs and render proceedings more efficient in cases involving a great number of claimants, RIAD questions whether a European initiative is necessary in this context. It is very unlikely that specific procedural and management problems regarding the administration of collective proceedings could be solved at the European level and so it should remain a national competence. The European Commission will publish two studies on the issue in autumn 2008. It is expected that these studies will address the demand for and utility of such a European initiative. RIAD will react accordingly depending on the Commission's policy decision.

### Litigation costs for victims of road traffic accidents

A seemingly perennial topic in the context of the Motor Insurance Directives is the treatment of litigation costs for victims of road traffic accidents. The European Commission published a report about the availability of legal expenses cover in the EU and the European Parliament is expected to respond to this report in September 2008. The discussion centres on the question of how to guarantee that an injured party who

legitimately pursues and enforces a claim for damages incurred in an accident abroad, is not burdened with the litigation costs. For RIAD neither the introduction of a mandatory legal expenses insurance scheme nor the harmonisation of the notion of 'damages' on a European level are feasible solutions to this problem. Also in September, the European Commission will publish a study on the compensation of victims of cross-border road traffic accidents. This study will analyse, hopefully quantify and possibly present proposals to solve persistent problems in this context. RIAD calls upon the European Commission to ensure that Member States create legal frameworks which stimulate insurers' entrepreneurial initiative and - especially in the new Member States - pave the way for further development of the legal expenses insurance market.

### Solvency II project

Solvency II is another issue on RIAD's radar. The results of the fourth Quantitative Impact Study (QIS4), which ran between April and July, will be available in November 2008. According to the schedule, the framework Directive should be adopted by the European Parliament and the Council in 2009, the implementing measures should be finalised in 2010 and the Directive should be transposed into national legislation by 2012.

### Services Directive implementation

The transposition of the Services Directive into national law is due by the end of 2009. RIAD is closely watching national implementation measures with regard to the provision of legal services: according to the Directive, Member States are allowed to restrict the freedom of organisations from abroad looking to provide services, should they reserve certain activities to a particular profession, i.e. the Directive foresees that Member States can implement monopolies, for instance in the provision of legal services.

### The Small claims procedure

Member States will have to apply the small claims procedure from 1 January 2009 and for RIAD it will be of particular interest to see the level of take-up by consumers and legal expenses insurers when pursuing cross-border claims of up to €2,000.

### Raising RIAD's Profile

Last but not least, RIAD is very concerned about making membership attractive to as many legal expenses insurers as possible. Therefore, it is a declared goal to raise RIAD's profile.

RIAD's full potential as an industry representative can only be delivered with a dominant penetration of the legal protection insurance sector, in a multitude of countries and regions. Growth in RIAD's membership will be driven by enhancing the value of membership.

RIAD members are considering various means to raise the Association's visibility, including a quality mark or charter, which would act as a guarantor of quality services and a promoter of best practices.

Other ideas include the setting up of a database which provides information about the industry, RIAD members and products and services. Initial data gathering for this value-added feature is in progress.



## XIV. Members

### Austria

#### D.A.S. Österreich

Hernalser Gürtel 17  
1170 Wien  
[www.das.at](http://www.das.at)

### Belgium

#### AUDI

Frankryklei 79  
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[www.audi-protectionjuridique.be](http://www.audi-protectionjuridique.be)

#### D.A.S. s.a.

Avenue Lloyd George 6  
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[www.das.be](http://www.das.be)

#### EUROMEX N.V.

Prins Boudewynlaan 45  
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[www.euromex.be](http://www.euromex.be)

#### Legibel G. I. E.

Rue Royale 55  
1000 Bruxelles  
[www.legibel.be](http://www.legibel.be)

#### Les Assurés Réunis SA (L.A.R.)

Avenue des arts 52 bte 1  
1000 Bruxelles  
[www.lar.be](http://www.lar.be)

#### Providis sa

Rue du Pont Neuf 9  
1000 Bruxelles

### Canada

#### La Capitale Ass. Générales

525, boul. René-Lévesque Est, 6e  
étage, CP 17100  
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### Czech Republic

#### D.A.S. pojišťovna právní ochra- ny, a.s

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### France

#### Assistance Protection Jurique

Le Vendôme, 12, Rue du Centre  
93196 Noisy le Grand  
[www.gmf.fr](http://www.gmf.fr)

#### CFDP Assurances

1, Place Francisque Régaud  
69002 Lyon  
[www.cfdp.fr](http://www.cfdp.fr)

#### CIVIS

90, Avenue de Flandre

75019 Paris

[www.civis.fr](http://www.civis.fr)

#### LA DAS

34, Place de la République  
72045 Le Mans  
[www.ladas.fr](http://www.ladas.fr)

#### E.P.J.

7, Boulevard Haussmann  
75442 Paris  
[www.epj-assurances.com](http://www.epj-assurances.com)

#### GROUPAMA PJ

45, Rue de la Bienfaisance  
75008 Paris  
[www.groupama-pj.fr](http://www.groupama-pj.fr)

#### JURIDICA (AXA)

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78166 Marly Le Roi  
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#### LA PAIX

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#### LE SOU MEDICAL

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92919 La Defense  
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#### MATMUT PJ

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#### PACIFICA

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75724 Paris  
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#### PROTEXIA

9, Boulevard des Italiens  
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[www.agf.fr](http://www.agf.fr)

#### THEMIS

50, Allée des Dauphins  
38330 Saint-Ismier  
[www.cornhill.fr](http://www.cornhill.fr)

### Germany

#### AUXILIA Rechtsschutz Versich- erung AG

Uhlandstraße 7  
80336 München  
[www.auxilia.de](http://www.auxilia.de)

#### Badische Rechtsschutzversich- erung AG

Durlacher Allee 56  
76131 Karlsruhe  
[www.bgv.de](http://www.bgv.de)

#### D.A.S. Deutscher Automobil

#### Schutz, Allg. Rechtsschutz-Ver- sicherungs-AG

Thomas-Dehler-Strasse 2  
81728 München  
[www.das.de](http://www.das.de)

#### DEVK Rechtsschutz-Versich- erungs-AG

Riehler Straße 190  
50735 Köln  
[www.devk.de](http://www.devk.de)

#### Hamburg-Mannheimer Rechtss- chutzversicherungs-AG

Überseering 45  
22297 Hamburg  
[www.hamburg-mannheimer.de](http://www.hamburg-mannheimer.de)

#### ROLAND Rechtsschutz-Versich- erung-AG

Deutz-Kalker-Straße 46  
50679 Köln  
[www.roland-rechtsschutz.de](http://www.roland-rechtsschutz.de)

#### Württembergische Versich- erung AG

Gutenbergstraße 30  
70163 Stuttgart  
[www.wuerttembergische.de](http://www.wuerttembergische.de)

### Great Britain

#### Albany Assistance Limited

Remond House Fern  
Court Bracken Hill  
Business Park  
Peterlee Country  
Durham SR8 2RR  
[www.albanyassistance.co.uk](http://www.albanyassistance.co.uk)

#### Amicus Legal Limited

The Old Exchange  
65 West Stockwell Street  
Colchester Essex CO1 1HE  
[www.amicuslegal.co.uk](http://www.amicuslegal.co.uk)

#### Angel Assistance Limited

Pinsgate Lower Bristol Road  
Bath BA2 3DP  
[www.angelassist.co.uk](http://www.angelassist.co.uk)

#### BRIT Insurance

55 Bishopsgate  
London EC2N 3AS  
[www.britisurance.com](http://www.britisurance.com)

#### CAPITA Insurance Services Limited

40 Dukes Place  
London EC3A 7LP  
[www.capitais.co.uk](http://www.capitais.co.uk)

#### D.A.S. Group UK

Quay Side, Temple Back  
Bristol BS1 6NH  
[www.das.co.uk](http://www.das.co.uk)

#### LAMP Insurance Company Lim- ited

Chester House Harlands Road/Suite  
G6A Cornwall's Centre Gibraltar  
Haywards Heath West  
Sussex RH16 1LR  
[www.lampinsurance.com](http://www.lampinsurance.com)

### Greece

#### D.A.S. Hellas

L. Sygrou 44  
11742 Athen  
[www.das.gr](http://www.das.gr)

### Hungary

#### D.A.S. Jogvédelmi Biztosító Rt.

Rákóczi út 70-72  
1074 Budapest  
[www.das.hu](http://www.das.hu)

### Ireland

#### D.A.S. Group Ireland

12, Duke Lane  
2 Dublin  
[www.das.ie](http://www.das.ie)

### Italy

#### D.A.S. Italia

Via 4 Novembre 24  
37126 Verona  
[www.das.it](http://www.das.it)

#### Europa Tutela Giudiziaria

Via Senigallia 18/2  
20 161 Milano  
[www.europatutelagiudiziaria.it](http://www.europatutelagiudiziaria.it)

### Luxembourg

#### D.A.S. Luxemburg Allg. Rechtss- chutz-Versicherung S.A.

3, Rue Thomas Edison  
1445 Strassen  
[www.das.lu](http://www.das.lu)

### Netherlands

#### D.A.S. Rechtsbijstand

Karspeldreef 15  
1102 BB Amsterdam  
[www.das.nl](http://www.das.nl)

#### SRK Rechtsbijstand

Bredewater 12  
2715 CA Zoetermeer  
[www.srk.nl](http://www.srk.nl)

#### Stichting Achmea Rechtsbij- stand

Laan van Malkenschoten 20

7333 Apeldoorn  
[www.achmea.nl](http://www.achmea.nl)

**Stichting Rechtsbijstand Gezondheidszorg**  
 Orteliuslaan 750  
 3528 BB Utrecht  
[www.srg.nl](http://www.srg.nl)

### Poland

**D.A.S. Towarzystwo Ubezpieczeń Ochrony Prawnej S.A.**  
 ul. Wspolna 25  
 00-519 Warszawa  
[www.das.pl](http://www.das.pl)

### Slovakia

**D.A.S. Slovakia**  
 Kutuzovova 3  
 831 04 Bratislava  
[www.das.sk](http://www.das.sk)

### South Africa

**Legalwise Legal Expenses**  
 Insurance Southern Africa Ltd  
 Constantia Ridge Office Park Block B 764 Golf Club Terrace Constantia  
 Kloof 1709 Roodepoort  
 1715 Weltevredenpark  
[www.legalwise.co.za](http://www.legalwise.co.za)

### Spain

**D.A.S. Internacional Spain**  
 Pl. Dr. Letamendi 1 y 2  
 08007 Barcelona  
[www.das.es](http://www.das.es)  
**DEPSA**  
 Gran Via de les Cortes Catalanes  
 645-5°  
 08010 Barcelona  
[www.depsa.es](http://www.depsa.es)

### Switzerland

**COOP Rechtsschutz**  
 Entfelderstrasse 2  
 5001 Aarau  
[www.cooprecht.ch](http://www.cooprecht.ch)  
**DAS Protection Juridique SA**

Avenue de Provence 82  
 1000 Lausanne 16  
[www.das.ch](http://www.das.ch)

**FORTUNA Rechtsschutz-Versicherungs-Gesellschaft**  
 Soodmattenstr. 2  
 8134 Adliswil 1  
[www.fortuna.ch](http://www.fortuna.ch)

### ORION

Centralbahnstrasse 11  
 4002 Basel  
[www.orion.ch](http://www.orion.ch)

### PROTEKTA

Monbijoustrasse 68/Postfach  
 3001 Bern  
[www.protekta.ch](http://www.protekta.ch)

## XV. Who's Who

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**Kurt VOGT until April 2008**

**(COOP Rechtsschutz, Switzerland)**

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## Endnotes

<sup>1</sup> CEA "Insurance in Figures 2006" According to CEA statistics the legal expenses insurance premium in 2006 in EU-25 and Switzerland was €6476 million.

<sup>2</sup> Joined Cases C-94/04 and 202/04, Cipolla-Macrinio and Capodarte.

<sup>3</sup> COM(2007)226 final.

<sup>4</sup> SEC(2007)1520.

<sup>5</sup> Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II); OJ L 199 of 31 July 2007.

<sup>6</sup> COM 2007(0207)

<sup>7</sup> See Official Journal of the European Union, C 247E 06.10.2005, p. 28

<sup>8</sup> Directive 2005/14/EC of the European Parliament and the Council of 11 May 2005, amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles

<sup>9</sup> The results of the online public consultation on motor insurance can be found on [http://ec.europa.eu/internal\\_market/insurance/docs/motor/results\\_en.pdf](http://ec.europa.eu/internal_market/insurance/docs/motor/results_en.pdf)

## Annex – Overview RIAD Positions

### 2006:

Legal Expenses Cover of Victims of Road Accidents

Joint Position Paper of CEA and RIAD on the Final Study on the Feasibility of Possible Insurance Schemes against Patent Litigation Risks

### 2007:

Reflections of RIAD on how to improve Legal Certainty for Patentees

Position Paper of RIAD on the Green Paper on Retail Financial Services in the Single Market

Response of the International Association of Legal Expenses Insurance (RIAD) to the European Commission's Report on certain issues relating to Motor Insurance and Legal Expenses

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