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**CONSULTATION ON ALTERNATIVE DISPUTE RESOLUTION IN THE AREA OF
FINANCIAL SERVICES
RESPONSES OF THE INTERNATIONAL ASSOCIATION OF LEGAL EXPENSES
INSURANCE (RIAD)**

I. About RIAD

RIAD is the international association of legal protection insurance and represents almost 60 insurers from 18 countries.

Legal protection insurance is a particular insurance whose prospects go beyond a traditional insurance product (i.e. the transfer of risks): according to the legal expenses insurance¹ directive the product not only consists in undertaking to bear the costs of legal proceedings but also in providing the services directly linked to the insurance cover. RIAD members actively support their clients with legal services such as giving advice and providing representation both out-of-court and in-court, thus facilitating access to law and justice for the insured person.

II. General comments

Legal protection insurers are very keen to help to enhance the use of ADR and agree with the Commission that for consumers, businesses and society in general ADR is the least costly and quickest way of resolving disputes and therefore helps improving access to law.

The development of FIN-NET would seem to be the most obvious solution to the problem of how to enable cross-border ADR to function smoothly in the area of financial services. However, consumers generally still need individualised help in finding adequate, easy and quick solutions for their specific problems, especially for cross-border disputes, where they typically face difficulties which they cannot handle without professional assistance (e.g. languages, legal and procedural issues, distant communication costs).

Consumers are often, therefore, reluctant to employ any kind of ADR unless they are professionally assisted. Legal protection insurers can provide such assistance, and at the same time help keeping the number of in-court litigation low.

III. Responses to the questions

Membership of FIN-NET and Creation of ADR schemes (questions 1 to 4)

While RIAD is strongly in favour of both the development of ADR schemes in all Member States and the increase in FIN-NET use, RIAD also considers that presently a regulatory approach should not be taken in order to achieve these ends, let alone a binding EU

¹ Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance (OJ L 185/77 of 04/07/1987).

instrument. It does seem likely, however, that for new Member States to develop ADR schemes for all financial sectors may take time, support and encouragement from the EU and from older Member States, which have had far more time to build up mature markets.

This view is based both upon the facts that, firstly since 2001 the number of members of FIN-NET has been increasing and developing fairly rapidly and, secondly, that annex 3 of the Consultation paper shows that non existence of ADR schemes or non-adherence to FIN-NET is predominantly a phenomenon of the new Member States.² If, after a certain time, it turns out that there is no improvement regarding the implementation and use of national ADR schemes and FIN-NET, it might be necessary to take a decision as to whether a regulatory or any other initiative should be adopted.

This said, a well-conceived EU-wide awareness campaign strongly recommending the use of ADR schemes and of FIN-NET and advertising their benefits to all actors would certainly help to accelerate the expansion of both ADR schemes and of FIN-NET.

Adherence to ADR schemes (Questions 5 to 6)

The use of ADR is undoubtedly beneficial not only for consumer but also for service providers. Also, in order to guarantee the full benefits of ADR RIAD agrees with the Commission that it is essential to convince the large majority of the industry to adhere to the system. Accordingly, it might be useful to introduce direct incentives for the use of ADR (e.g. recognition, labels, etc.).

In order to solve ADR failures and identify incentive for companies to adhere to ADR schemes it should be scrutinised why financial services providers are reluctant to use ADR or refuse to adhere. For example, it is possible that both the legal traditions and the usual business practices in some countries make access to and use of ADR more difficult to establish and encourage than in other Member States.

To make ADR schemes more attractive it is also necessary to ensure that they are evidently and substantially less complicated and costly than traditional court procedures. A possibility would be to increase similarities between national ADR schemes since this would make consumers less reluctant to use foreign ADR schemes.

Information to consumers about ADR schemes and FIN-NET (Questions 7 to 9)

In general RIAD agrees that financial services providers should inform their customers about the availability of ADR and of FIN-NET when a contract is concluded. Furthermore, if it is assured that ADR generate true advantages for businesses and consumers alike financial service providers will inform their costumers of the availability of ADR schemes when a conflict arises in order to inform customers in a transparent way how to settle a dispute as quickly as possible.

Awareness of FIN-NET and of its member ADR schemes (Question 10)

RIAD members agree that more promotion of ADR and, thus, of FIN-NET is essential to overcome reluctance of businesses to adhere to such schemes. In particular, national ADR schemes and financial service providers should promote affiliation to FIN-NET more actively. An EEA-wide information campaign could also influence traditions and practices on national levels which hinder businesses from adhering to such schemes. Specific emphasis should be given to underlining the advantages of adherence in a way that non-adherence is perceived as a competitive disadvantage. However, as seen since the introduction of FIN-NET, in the long term it seems likely that market forces and maturity of markets could help to convince services providers to see the benefits of ADR.

² The table in annex 3 shows that there are 116 possible schemes covering the 4 sectors in 29 EEA Member States. Presently, 45 of these potential ADR schemes either do not yet exist or do not adhere to FIN-NET. 35 schemes of these 45 are from new Member States, which means that 78% of the cases where there is no FIN-NET membership or no ADR scheme at all are from new Member States.