

CONCLUSIONS of RIAD
**Impact of the proposed legislation on alternative dispute resolution (ADR) and
online dispute resolution (ODR) on legal protection insurance**

RIAD evaluated whether the proposed legislation on alternative dispute resolution (ADR)¹ and online dispute resolution (ODR)² will have an impact on legal protection insurance and whether it will necessitate changes of national provisions regulating legal protection insurances.

Because the legislative procedure was still ongoing when these conclusions were drawn, Action Team members based their assessment on the texts available at that time, i.e. the Commission's proposals, the amendments tabled in the IMCO Committee of the European Parliament and the text of the Council of Ministers' General Approach as agreed on 31 May 2012. Subsequently, the present conclusions are under reserve that the final texts of the Directive and the Regulation will not differ in substance from the texts available at the time of this evaluation.

1. Relationship between Article 203 of Directive 2009/238/EC, i.e. former Article 6 of Directive 87/344/EC, and the ADR Directive

- The Action Team came to the conclusion that the proposed Directive does not compel legal protection insurers to change existing procedures regarding the settlement of disputes between the insurance undertaking and the insured about the attitude to be adopted in order to settle a claim of the insured. This conclusion is founded on the fact that the established procedures are ad hoc procedures which are not caught by the scope of the directive: a survey among RIAD members has shown that all members refer the settlement of these disputes to a lawyer who issues his or her opinion.
- The Action Team also concluded that Article 203 of Directive 2009/238/EC (former Article 6 of Directive 87/344/EC) is not inferior to the proposed ADR Directive. Subsequently, Member States will not have to introduce new legislation for transposing the insurance Directive. This issue was raised because Article 3(3) of the draft ADR Directive stipulates that it prevails over sector specific legislation (the insurance Directive) to the extent that the sector specific provisions do not ensure the same degree of consumer protection as the proposed ADR Directive.

The Action Team derives this conclusion from the systematic interconnection between the 2 pieces of legislation: while the proposed ADR Directive does not oblige Member States or companies to establish ADR entities it only wants to assure that, if it is decided to establish an ADR entity, this entity complies with the rules set out in the Directive. Equally, the insurance Directive does not oblige Member States to set up ADR entities when transposing Article 203 of Directive 2009/238/EC (former Article 6 of Directive 87/344/EC). Subsequently, as long as Member States transpose the insurance Directive as they have done in the past the procedures remain valid and legitimate and the provisions of the proposed ADR Directive do not force Member State to transpose the insurance Directive differently.

¹ COM(2011)793

² COM(2011)794

2. Does the proposed ADR Directive affect internal complaints procedures set up by individual insurers?

The Action Team came to the conclusion that this is not the case because the Directive explicitly excludes that it applies to procedures where the natural person in charge of dispute resolution is employed or remunerated by the trader, i.e. employees of insurers who receive and treat complaints of insured persons do not fall under the scope of the Directive and, consequently, these internal procedures do not have to comply with the requirements established by the proposed ADR Directive.

3. Impact of the proposed ADR Directive and ODR Regulation on existing national Ombudsman systems

The Action Team came to the conclusion that existing national Ombudsman systems (e.g. Ombudsman des Assurances/ Ombudsman van de Verzekeringen in Belgium, Versicherungsombudsmann e.V. in Germany, Médiateur de la Fédération Française des Sociétés d'Assurances in France, Klachteninstituut Financiële Dienstverlening in the Netherlands, or Financial Ombudsman Service in the UK) are caught by the proposed ADR Directive and ODR Regulation because they explicitly apply to disputes concerning contractual obligations arising from the sale of goods and services, i.e. financial services are included.

Consequently, statutes and rules of procedures of national Ombudsman systems must eventually be aligned with the provisions of the ADR Directive and the ODR Regulation. Likewise, RIAD members will have to comply with updated information requirements and other obligations. The Action Team decided that it was the responsibility of national Insurance Associations to make sure that their national members comply with new legislation and to inform about adjustments of existing requirements. Therefore, the Action Team refrained from going into detail in this respect.

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