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**Consultation on the Compensation of Victims of Cross-Border Road Traffic
Accidents in the European Union
Reaction of the International Association of Legal Expenses Insurance
(RIAD)**

Legal protection insurers have been following the discussions about the compensation of victims of cross-border traffic accidents very attentively and fully support the Commission's aim to improve the protection of victims of road accidents. In this context the question has been brought up how a victim would be compensated for legal costs if he had to litigate: a problem arises if the applicable law, contrary to the law of the victim's country of residence, does not foresee coverage of litigation costs or if the level of compensation foreseen by the foreign law is too low, i.e. the victim unexpectedly cannot recover (fully) his litigation costs. RIAD has stressed repeatedly the importance of legal protection insurers in this respect since they provide victims with advice and financial means necessary to pursue their rights (RIAD position papers are available under: www.riad-online.eu). The ongoing consultation focuses on compensation rules regarding the types of damages eligible (hereby leaving out the subject of litigation costs), the quantification of damages and limitation periods, i.e. questions which primarily concern third party liability and not legal expenses insurers. RIAD therefore targets at a few specific issues which are relevant for Members.

I. Policy Options and Proportionality

The Commission wants to find out how stakeholders perceive the effects of the application of foreign law to claims arising from cross-border road traffic accidents and the opinions on different policy options. The major problems in this respect are that according to the applicable law victims risk receiving unexpectedly low compensation awards or that limitation periods are shorter than anticipated, thus preventing victims from filing their claims before expiry.

Accordingly, it can be assumed that the Commission's issue and aim of the present exercise is not to harmonise the compensation levels or limitation periods between Member States as such. The objective is rather to protect visiting victims from the risk of unexpectedly low compensation and premature expiry of limitation periods. RIAD agrees with the authors of the study that the decision about an appropriate policy option must be set-off against the extent of the problems it seeks to solve: in this case the importance of the problem is determined by the number of EU citizens concerned as well as the discrepancy between national compensation levels.

As shown in the study it is almost impossible to actually quantify the overall differences between national compensation levels: Member States provide divergent amounts for particular damages and while the awards for particular damages deviate the award levels in total might however converge. Moreover, the authors narrow down the number of persons effectively concerned by this issue to far less than one percent of all road traffic accidents. Consequently, while this presents an important problem for the individual the significance from the societal perspective is not evident.

Taking the above findings into account, RIAD agrees that a European intervention with the aim of changing the legal landscape would not be proportionate to the significance of the problem and could not be justified from a subsidiarity perspective. At this stage this conclusion also includes policy options 7 (the introduction of compulsory driver's insurance) and 8 (obligatory systems of direct settlement of claims) of the consultation paper.

II. The Role of Legal Protection Insurance for Victims

In view of the negative consequences and considering the losses suffered by concerned victims it is of course desirable to find a solution for existing gaps. But as stated above legal protection insurers are not in the center of this discussion. However, legal protection insurers can provide an answer in individual cases: they stand on the side of their policy holders, i.e. the victims, provide them with legal advice and defend their legal interests against the liable party and - in many cases - against the third party liability insurance. Furthermore, legal protection insurers cover the costs of proceedings which also include the costs of the adverse party if the victim loses his case and the applicable law determines that the losing party pays.

Hence, legal protection insurers can be an enormous help and sometimes even the last resort if a victim is confronted with the complexity of a foreign law and faces substantial extra costs due to the cross-border implications of litigations. Therefore, victims who are covered by legal protection insurance can rely on legal expertise and do not run a financial risk regardless of the applicable national law and the outcome of the proceedings.

RIAD

RIAD is the representative body of some 60 legal expenses insurers and service providers in the field of legal expenses insurance from 16 European countries, Canada, and South Africa. The Association's members offer their customers affordable, efficient and effective access to law and justice in providing them actively with legal advice and other legal services needed for pursuing their rights and in covering costs incurred by the insured persons.

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