



ASSOCIATION INTERNATIONALE DE L'ASSURANCE DE PROTECTION JURIDIQUE
INTERNATIONALE VEREINIGUNG DER RECHTSSCHUTZ-VERSICHERUNG
INTERNATIONAL ASSOCIATION OF LEGAL EXPENSES INSURANCE

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**Comments of the International Association of Legal Expenses Insurance
on the**

Follow-up of the Green Paper on Consumer Collective Redress (COM(2008)794)

In its consultation paper of 8 May 2009 the European Commission infers from the replies to its preceding Green Paper the available policy options and also describes the policy objectives it wants to attain. With the ongoing consultation the Commission aims at collecting quantitative and qualitative data on the different issues and options discussed in its consultation paper, in particular concrete examples, figures and the impact on national redress systems.

Over the past two years, RIAD, as representative body of legal protection insurance companies and service providers in the field of legal protection, has been following the ongoing discussions about collective redress very attentively, has participated in several public hearings and workshops and has submitted three different position papers (available under: www.riad-online.eu). Therefore, this paper focuses on some specific issues related to the ongoing consultation.

I. The Policy Objectives

From the perspective of legal protection insurers the Commission's approach is too confined and it does not determine its general policy objectives correctly when it establishes that it wants to ensure access to effective means of redress for consumer mass claims across the EU and, thus, improve the functioning of the Internal Market by making it more competitive. Legal protection insurers agree with the Commission that consumer confidence is important for the Internal Market and that confidence is created to a large extent by providing efficient means to pursue and defend legitimate interests and claims. But the Commission still does not succeed in convincing legal protection insurers that, above all, the lack of a legal framework for an EU-wide collective redress instrument actually distorts the Internal Market and that the absence of this particular instrument is responsible for the lack of consumer confidence. The problem is much broader and a more horizontal approach is necessary in order to embrace all possible implications, answers and remedies.

Consequently, the general policy objective must rather be to facilitate easy, affordable and efficient access to law and justice across the EU in general without simply insinuating that access to mass claims is the only viable instrument and solution. Thus, a priority should be to ensure that existing legal and other instruments are interpreted and employed in a way which does not impede the overarching goal of providing consumers with an efficient legal framework for pursuing their legitimate claims. In this context legal protection insurance is an important and affordable feature for consumers to enforce their rights

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efficiently. This has generally been acknowledged and the European Directive on Legal Expenses Insurance¹ provides a legal framework to ensure that legal protection insurers function properly and respect the interests of the insured persons. As a matter of fact, the interpretation of this Directive is presently subject of a preliminary ruling before the European Court of Justice² and RIAD sees a danger that the ruling of the Court, should it concur with the Advocate-General's opinion of 14 May 2009, will undermine an effective management of mass claims by legal expenses insurers and thus have a damaging impact on access to law for consumers (see also RIAD press release under: www.riad-online.eu). For this reason, if EU consumer policy favours to make damages claims by victims more efficient, whilst ensuring respect for European legal systems and traditions, legal protection insurers call on EU Institutions to broaden their perspective, examine the actual interests and needs of consumers attentively and prevent that legislation and existing instruments are interpreted and used in a way which is detrimental to consumer interests and rights.

II. The Policy Options

The Commission concludes that a combination of several instruments would be the best way forward. This has also been RIAD's position and legal protection insurers have stressed the importance of enhancing cooperation and compatibility between the different national systems and mechanisms before creating an additional European instrument which can hardly solve any of the existing consumer detriments³.

Subsequently, RIAD rejects option 5 (EU-wide judicial collective redress mechanism) of the consultation paper and considers that option 3 (non-binding setting up of collective ADR schemes and judicial collective redress schemes) in combination with the adaptation of some other EU instruments is likely to hold the best prospects. In this respect RIAD supports the proposal of the Directorate General for Justice, Freedom and Security (JLS) in its Green Paper on the review of the Brussels I Regulation⁴ to provide procedural means which facilitate the coordination of parallel proceedings before the courts of different Member States in order to avoid the risk of irreconcilable judgments resulting from separate proceedings. To this end, it seems inevitable that the jurisdiction for joint claims is given to the courts of the Member State where the defendant is domiciled and that an obligation is introduced on the part of courts which had declined jurisdiction to re-open the case if the court first seized declines jurisdiction afterwards.

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.

¹ Directive 87/344/EEC of 22/06/1987, OJ 1987 L 185/79 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance

² Case C-199/08 Eschig

³ See p. 42, 43 of the Final Report of Civic Consulting, Part I of the "Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems"

⁴ COM(2009)175