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International Association of Legal Protection Insurance (RIAD)
Opinion on the
“Feasibility study for a future instrument in European Contract Law”
of the Commission Expert Group on European Contract Law

The International Association of Legal Protection Insurance welcomes the European Commission’s efforts to enhance the efficiency of the Internal Market and to increase cross-border transactions. We share the European Commission’s opinion that the lack of legal certainty and the existence of different languages are obstacles to the improvement of the Internal Market.

Material scope of the feasibility study

The proposed set of rules would apply only to sales contracts and service contracts associated with sales, such as installation or maintenance, provided by the seller or under the seller's responsibility¹. Thus, they do not apply to legal protection insurance (LPI) contracts and therefore we do not see the necessity to answer the European Commission’s questions at this time. However, we consider the harmonisation of contract law as an important issue and we will therefore follow up and comment if necessary the Commission’s next steps.

Specific issues for legal protection insurance (LPI)

The introduction in the near future of a new set of rules covering only sales contracts and related services could be a positive and realistic step towards a more integrated Single Market. We consider that a more efficient cross-border market will reduce cases concerning the interpretation of various contract in cross-border disputes and thus benefit insured persons, SME's as well as legal protection insurance.

The application of the proposed rules could also provide some useful (but obviously far from sufficient) information and data for a subsequent feasibility study focusing on the considerably more complex service sector. Indeed, an in-depth cost-benefit analysis and a sound impact assessment should be undertaken, prior to any attempt at putting such a system into practice. Moreover, we consider that the absence of such an assessment makes it extremely difficult to comment on the potential benefits of the new rules.

It is a fact that the legal protection insurance sector is facing numerous impediments to a truly free Internal Market. These impediments stem from the existence of different distribution traditions and judicial systems, language barriers as well as the fact that insurance products are designed to meet specific local needs.

However, by their nature most of these impediments are unlikely to be satisfactorily addressed simply by a common set of contract rules. It is even doubtful whether it would be possible to design satisfactorily such a common set of rules in the currently

¹ Unfortunately this restriction of the scope of the proposed rules is not made clear in the introductory provisions of the proposed instrument itself (Annex IV), but only in the definition of the material scope given by the European Commission on page 6 of the “explanatory note”.



ASSOCIATION INTERNATIONALE DE L'ASSURANCE DE PROTECTION JURIDIQUE
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highly varied legal environment governing financial services in general and especially the legal protection insurance sector.

Therefore we believe that the development of a credible approach to a single system of contract law covering services is still many years away and will require a major harmonisation effort on many other fronts before it could become at all feasible in any form.

RIAD represents legal protection insurance companies from 17 European countries, Australia, Canada, South Africa and South America. RIAD members are specialised in insurance and/or services linked to legal protection insurance. Most of RIAD's members are SMEs offering a very specific product: they offer to their clients, through an insurance policy, the resources that are necessary for access to high-quality and easily accessible legal advice and services. They also protect their clients effectively against financial risks associated with engaging legal experts and gaining access to the law.