

Brussels, 14 June 2017

**Responses of the International Association of Legal Protection Insurance to the
Consultation on
FINTECH: A MORE COMPETITIVE AND INNOVATIVE EUROPEAN FINANCIAL SECTOR**

RIAD, the International Association of Legal Protection Insurance (www.riad-online.eu), is the only body worldwide representing the unique interests of legal protection insurers and of service providers in this field from Europe, Canada, South Africa and Japan. RIAD defends the interests and advocates the high potential of legal protection insurance as an easy, affordable and high-quality solution for access to justice and the law.

In this respect, RIAD sees the prospects and possible benefits that innovation and new technologies can bring to consumers in the area of access to law and that legal protection insurers can play an important part in improving access to justice even further in applying new technologies for the advantage of their customers. In this, legal protection insurers tend to be more innovative than most other providers of legal services.

The insurance industry has always been conservative in its ways and often lagging behind developments already taking place in the banking sector. Actually, as recent as June 2016 a third of insurers still had not dealt with FinTech at all while banks have embraced these technologies at a far earlier stage (PwC Study: *'Opportunities await: How InsurTech is reshaping insurance'*). However, the insurance sector has woken up and realised that FinTech/InsurTech of today could actually be the insurance of tomorrow. Consequently, awareness, development, use, as well as sophistication of technology-enabled service provision is gaining momentum within the sector and insurers understand that they need to invest in new technologies and tools if they want to remain relevant.

In a nutshell, the emergence of FinTech and InsurTech is disrupting the insurance sector and companies find themselves at the crossroads where either investing in new technologies or staying on the traditional path could well be a question of survival for their companies.

RIAD members are in exactly this situation: either they try to catch up with their competitors or they are proactive and work hard to lead the way ahead of the pack. Either way, legal protection insurers are in the midst of commotion and turmoil and it is obvious that, at this stage, taking the right strategic decisions, being the first to exploit innovative technology, and applying new tools creatively is decisive for the future of each company. In the legal protection insurance sector, taking the right decisions now will, effectively, separate the wheat from the chaff for the future.

Moreover, while the insurance sector as such is shaken to the core by FinTech/InsurTech, the emergence of LegalTech (technology-enabled legal services) has an additional disruptive effect on legal protection insurance due to the fact that it is a particular financial service: besides bearing costs, legal protection insurers' services include compensation in kind (see Article 198 of Directive 2009/138/EC) because legal protection insurers are explicitly encouraged to provide legal services to defend and pursue the rights of their policyholders. Consequently, in the area of legal protection insurance, technology-enabled legal services have been finding their way into claims settlement: for instance, if a policyholder wants compensation for the delay of his flight, his legal protection insurer can direct him to online platforms like flightright.de or weclaim.com and offer to pay the fee for using these tools.

For the time being, RIAD has not yet developed a common position concerning its policy in regard of FinTech/InsurTech. RIAD members are presently exploring individually the potential of FinTech/InsurTech for their strategies and future business models. Consequently, RIAD limits its contribution to some general remarks and suggestions, refrains from responding to the individual questions, and submits a general position which follows the structure and touches upon the questions in the 4 chapters of the consultation.

Chapters 1. & 2. of the consultation:

Fostering access to financial services for consumers and businesses – Bringing down operational costs and increasing efficiency for the industry

Legal protection insurers, like the entire sector, are heavily investing in new technologies and developing technology-enabled tools because it is evident that these reduce costs and increase efficiency for insurers as well as for their customers. An example for ongoing investment in the insurance sector as such is the *B3i Initiative* of 15 insurers, launched in October 2016 to explore the potential of blockchain technology in the relations between insurers and reinsurers. The consortium is expected to present some results in June 2017.

Chatbots are a useful tool to support and interact with customers. They combine artificial intelligence (AI) with a friendly interface to simulate a dialog, conversation and/or Q&A with users. Chatbots can be employed in many ways, e.g. develop legal documents, file claims, or select a lawyer. Examples are: www.donotpay.co.uk (parking tickets), www.flightright.co.uk and www.claimingo.be (flight delays), www.alexia.fr (matching people with lawyers).

AI is now used to analyse documents, extract information, review and create contracts or legal documents. It helps users to understand legal documents, determine whether they have rights or legal issues, and file a claim in-court without the need to ask assistance of a lawyer (www.demanderjustice.com). On the other hand, legal protection insurers use AI to determine the prospects of success of policyholders' claims (for instance: www.caselawanalytics.com) and the risks they take on as well as for an intelligent analysis of the available client data. Other available platforms are: www.robotlawyerlisa.com, www.beagle.ai, www.rossintelligence.com. A next step might be the automatic handling of easy cases without need of manual handling by the insurance.

But those technology-enabled services also raise issues: for instance, who is liable for the correctness of the content? What happens if the programming defaults? Which law is applicable for the contracts, the storage of the data etc.?

New technologies have also brought about new forms of insurance such as peer-to-peer (p2p) or on-demand insurance:

p2p: a community pools a risk and shares the potential loss. The pool is much smaller than a traditional insurance pool, it is based on trust, transparency, and affinity. An example is: www.friendsurance.com. It acts as broker for home content insurance, private liability, electronic, and legal protection insurance for small groups of users (a claims-free-bonus is granted and they will be partially reimbursed if no claim is filed in a given year). On-demand insurance allows policyholders to take out cover for very specific items, e.g. a PC or smartphone, or for the limited extent of using, for instance, a car (per kilometre). Targeting insurance cover like this and moving away from a long-term perspective, allows to calculate premiums in proportion to the extent of use and insurance cover can be designed to meet the explicit requests and needs of customers. Examples are: www.slice.is, www.trov.com.

New technologies and technology-enabled services present opportunities as well as risks: for instance, persons that present a high risk can face problems when joining a p2p insurance. This could even be more difficult if the line of product is very specific, e.g. legal protection insurance. Also, small insurance companies might not be able to survive in case of a big adverse event while traditional insurance companies, with a large pool of insured people sharing the risk, are better situated to absorb the repercussions.

Chapter 3. of the consultation:

Making the Single Market more competitive by lowering barriers to entry

RIAD agrees that more entrants in the insurance market force incumbents to adapt and innovate which normally renders the Single Market more competitive. However, to what extent we are talking about an EU (essentially Single Market) or a global market, considering that technology-enabled services seem to remove, at least to a certain extent, barriers on a global level.

For RIAD it is, at this stage, difficult to determine the real obstacles for market entrants. But it is important, when discussing how to lower barriers to entry, to assure that regulation creates and ensures a level playing field for all market participants and does not put incumbents or competitors at a regulatory disadvantage. This is of particular importance for legal protection insurers as competition does not only exist among insurers but also with legal service providers. Consequently, from RIAD's perspective it must be avoided that legal protection insurers find themselves in a disadvantageous situation compared to their competitors simply because, besides being providers of legal services, they are at the same time also an insurance company.

In any case, it must be noted that for insurance and in particular for legal protection insurance, some barriers are very difficult to remove because they are embedded in national legislation and tradition and prohibit insurers to move easily from one jurisdiction to another. Moreover, language is an impediment to underwriting an insurance contract in another country in terms of distribution, internal organization of the insurance company, and claims handling in a foreign jurisdiction. Also, for the insured it is important that he can read and understand the insurance contract terms and conditions in his own language.

One point, however, is self-evident: technology-enabled services depend on the connectivity and the ability of devices to inter-operate. Therefore, in order to make the Single Market competitive, it is crucial that standards are developed to assure that devices can be connected and that interfaces and interoperability work. Such standards must be agreed not only within the EU but worldwide.

Chapter 4. of the consultation:

Balancing greater data sharing and transparency with data security and protection needs

For insurance, data analysis is essential to calculate the risk and design an appropriate product. Presently, insurers receive and collect data mostly through direct contact with the insured or by means of the insurance broker or agent, i.e. data is freely available and can be stored, used and processed, always assuming that data protection rules are respected.

A change how insurance is distributed online can, subsequently, impact the availability of policyholders' data for insurers: if social media and/or insurance distributors decide to control and restrict the access to data, insurers would face problems obtaining the actuarial information necessary to calculate risks. Insurers would probably need to purchase the data from third parties. On the other side, we would most likely see unprecedented antitrust issues if the insurance industry decided to pool their data collection and share the same data base.

Moreover, traditional insurers could be marginalised when insurance products are sold white labelled and customers no longer know or care who their insurer is. This would most likely reduce the contact and dynamics between insurers and policyholders and would also impede transparency.

One of the most interesting uses of technology-enabled services could become its use to help policyholders make smart choices and prevent disputes. This would shift the approach from a remedial protection model to preventing disputes proactively, for instance taking into account people's behavioural patterns such as aggressiveness, use of language, litigiousness etc.