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Brussels, 21 April 2011

**Public consultation: Toward a Coherent European Approach to Collective Redress  
(SEC(2011)173)**

**The view of Legal Protection Insurers**

The aims of the current consultation are: 1) to find out which form of collective redress (hereafter: CR) fits into the EU system and the legal orders of Member States; 2) to identify common legal principles which should guide an eventual EU proposal; and 3) to evaluate how to improve the enforcement of EU legislation and the protection of consumers.

This illustrates that the European Commission's mind is made up. RIAD, the International Association of Legal Protection Insurance, expects that the Commission will subsequently push forward with its initiative and therefore seizes the opportunity to express the particular concerns of legal protection insurers in this paper.

**I. General remarks**

Legal protection insurers' objective is to facilitate access to justice for their customers. They therefore support the idea of CR if it helps to save costs, bundle claims effectively and render the pursuit of their clients' rights more efficient (see also RIAD's former position papers on: [www.riad-online.eu](http://www.riad-online.eu)).

To this end, in order to serve claimants' interests better, insurers support efforts to make existing national CR systems more functional and increase coherence between them (e.g. facilitate access for consumers from other Member States). However, legal protection insurers do not see the urgency for introducing an EU-wide instrument since it would actually not overcome existing obstacles which prevent consumers from obtaining redress.

Last but not least, a key issue is the funding of CR. In general, legal protection insurers seize their responsibility in financing CR procedures but it must be noted that a substantial increase in the number of CR could have a distortive impact on insurance premiums and/ or could force insurers to limit cover for these procedures. This is because the prospect of a very large number of claims coming from a single incident, as well as a general increase in claims, turns collective actions into a considerable financial risk for insurances.

**II. Funding of CR by legal protection insurers**

In the interest of their customers, legal protection insurers normally cover the costs of CR. However, if it is the Commission's goal to increase the number of CR claims and insurance cover is meant to be maintained at the same time, it will be decisive to put into place effective safeguards against abusive litigation as well as far-reaching mechanisms to reduce costs of CR procedures. This is important because legal protection insurers are subject to sectoral regulation<sup>1</sup> which substantially limits their own possibilities to manage claims,

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<sup>1</sup> 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

control and reduce costs. Consequently, it would almost be impossible to absorb extra costs incurred by more CR cases without increasing premiums or limiting insurance cover.

As an example, an important cost factor for legal protection insurance is legal representation in general, and in mass claim cases in particular. This is due to the fact that insured persons have the right to freely choose a lawyer once the claim is taken to court<sup>2</sup> and, consequently, in mass claims procedures insurers face the uncertainty of how many lawyers they have to pay and, thus, cannot assess the costs they might have to cover for legal representation since they do not know how many of their insureds will get involved or will choose their own lawyer. Moreover, insurers have difficulty identifying CR cases when they occur and do not have any means to persuade claimants to use the same lead solicitor nor can they force solicitors, who rather prefer to represent individuals themselves, to identify collective claims.

One of the consequences of the insured's freedom of choice suggests the need for giving insurers more competencies in managing claims in the pre-trial stage, e.g. settling claims via alternative dispute resolution mechanisms. But again, although insurers would be well placed to do this, in some circumstances their hands might be tied and their possibilities limited due to legal restrictions.

That said, it is decisive that there are in general sufficient pressures and incentives for claimants to join a collective action and in order to maintain insurance cover insurers should have more powers and tools to manage collective actions to a certain extent.

Besides the specific concerns of legal protection insurers, when it comes to avoiding abusive litigation the loser-pays-principle provides an important safeguard because it forces litigants to consider carefully before they file suit. Any exceptions to this principle must be very restrictive and should only be granted for particular cases (e.g. if there is no involvement of public or representative (consumer) bodies) and under specific circumstances (e.g. if a party produces willingly unnecessary and disproportionate costs).

**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.

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<sup>2</sup> See judgment of the European Court of Justice in Case 'Eschig v Uniq' (C-199/08)