



The European Federation of Insurance Intermediaries
La Fédération européenne des intermédiaires d'assurances

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POSITION PAPER

Follow-up to the Green Paper on consumer collective redress

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BIPAR, the European Federation of Insurance Intermediaries

is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 47 national associations, established in 31 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people.

Founded in Paris in 1937, BIPAR headquarters were moved to Brussels in 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.

I. General comments

1. BIPAR welcomes the opportunity provided by the European Commission to comment on its consultation paper on “the follow-up to the Green Paper on consumer collective redress”.
2. Against the background of the ongoing financial crisis, BIPAR welcomes any initiative aimed at restoring consumer confidence across the European Union and at providing efficient, balanced and proportionate mechanisms that would enable consumers to enforce their rights when these latter have been violated by unfair commercial practices from professionals not only in a national context but also with regard to cross-border activities. Obstacles to such enforcement (complex and long procedures, high litigation costs, etc...) should be tackled.
3. However, BIPAR is of the opinion that the introduction of an EU-wide judicial collective redress mechanism including collective ADR would not lead to the effective improvement of the compensation of consumers. On the contrary, it could lead to potential uninsurability of certain risks and might make procedures more complex.
4. BIPAR believes that the European Commission should favour the development of non-litigious individual resolutions of disputes between consumers and companies. In the insurance services sector, Alternative Disputes Resolutions (ADR) mechanisms – whether based on mediation, arbitration, negotiation, etc...- are in place in most of the EU Member States and already deliver efficient and effective outcomes (see CEIOPS survey on the implementation of IMD and its provision on out-of-court settlement).
5. As stated by the European Commission in its consultation paper on ADR in the financial services issued in December 2008, for consumers, businesses and society in general ADR is the least costly and quickest way of resolving disputes and therefore helps to improve access to law. It also states that *“generally, the existence of ADR mechanisms is considered important in raising consumer confidence in buying financial services from local providers and particularly from providers from other Member States. Therefore, ADR schemes need to be effective, which would also directly contribute to the effectiveness of FIN-NET”*.
6. BIPAR is a supporter of the Commission’s better regulation agenda and believes that there is first a need to ensure that all EU Member States have an ADR system and become members of FIN NET. The development of FIN-NET would enable cross-border ADR to function more smoothly in the area of financial and insurance services.
7. Once this is achieved and assessed, BIPAR believes that an assessment of the situation being performed in terms of costs and benefits would then be appropriate to indicate the need and the direction for further policy options.
8. It is also interesting to read in this respect the recent report of the law firm Herbert Smith LLP on the various proposals for class action reform in the UK and Europe. The findings revealed that the organisations surveyed (15 major organisations in the professional services, financial services and retail/consumer sectors) are generally opposed to the introduction of a new collective action regime. They are unified in their concern that any new regime adopted must avoid the worst elements of the US class action system, including contingency fees for lawyers, absence of the “loser pays” rule, jury trials and very large damages awards.

II. Specific comments on proposed options

9. In a first step BIPAR would favour **option 1** proposed by the Commission, which foresees the assessment of the current situation and of any developments considered likely to occur without any EU action.
BIPAR believes that litigation should be seen as a last resort and that the initial step should be the enhancement of the existing individual ADR. As explained by the Commission in its recent Communication on ADR in financial services, in Member States where it exists, ADR delivers efficient solutions. It offers the potential for non-adversarial, cost-effective and the prompt resolution of disputes.
10. Within FIN-NET, member ADR schemes work together to provide European consumers with easy access to a cross-border complaint procedure, that is to say, to ADR systems in other Member States. Increasing and improving progressively the use of ADR in Europe will cover the current gaps in the geographical coverage of FIN-NET. All national ADR systems should be members of FIN-NET.
Awareness-raising actions at national and European level could also be organised. European consumers are not aware enough of its existence and benefits.
11. Based on the assessment of option 1, **option 2**, which foresees the development of a standard model of collective ADR and a self-regulatory measure for traders to establish an internal complaint handling system, could then be considered.
12. BIPAR believes that it is important that such a standard model of collective ADR respects the Commission recommendations on ADR, that is to say, the principles of independence and of transparency, the adversarial principle, the principles of effectiveness, of legality, of liberty and of representation. Indeed, if existing national out-of-court redress mechanisms work today effectively and provide satisfactory redress for consumers, it is mainly because most of them comply with these principles.
13. BIPAR believes that it is important that any collective ADR scheme remains a voluntary model. However, parties to a dispute should always be encouraged to attempt to resolve their dispute without recourse to litigation.
14. BIPAR would also favour the development of a standard model of collective ADR which would avoid a patchwork of national collective redress mechanisms.
15. BIPAR agrees that self-regulatory measures to establish an internal complaint handling system should be encouraged where it does not yet exist.
16. BIPAR remains at the disposal of EU policymakers and looks forward to contributing in more detail to further discussions.