

## Insurance Europe's response to the European Commission's (EC) consultation on its proposal to review the ADR directive

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### Summary

Insurance Europe welcomes the opportunity to respond to the European Commission's consultation on the review of the current ADR directive. Insurance Europe supports the review's objective which is to adapt this framework to the digital market and its recent evolutions while improving cross-border ADR dispute resolution.

Nonetheless, Insurance Europe is of the view that:

- extending the scope of the ADR procedures to non-contractual consumer rights (Article 2) will result in unintended consequences and will not be feasible.
- while the ADR entities are mainly financed by European businesses, allowing third-country traders to take part in ADR procedures, risks having free riders benefitting from ADR resources while damaging the reputation of a whole sector.

### Insurance Europe's recommendations

Recommendation 1: The scope of the ADR Directive should be extended only to disputes arising from pre-contractual obligations, not to non-contractual situations.

ADR entities must remain an accessible, affordable and efficient way for consumers to resolve their disputes. However, the proposal to extend the scope of the ADR procedures to non-contractual consumer rights could overburden ADR entities that would not have the adequate resources and the necessary expertise to deal with the increased cases.

In several member states, the local ombudsman has proven to work well as an out-of-court dispute resolution body due to their level of expertise in a specific area of responsibility (ie insurance contract law). Widening the scope of application of the ADR directive will blur the lines between the area of competences between ADR entities, and public authorities such as national consumer ombudsman or financial supervisory authorities.

Although the extension of the ADR directive to pre-contractual obligations could enable more consumers to prefer following ADR procedures rather than going to court, which could lead to mitigating the risk of reputational damages, ADR entities are not ready to face the expected increasing burden of cases.

The extension of the scope would likely lead to an increased number of cases before ADR entities, as well as introducing cases where these bodies do not have necessarily the same area of expertise. While ADR entities' advantage is encompassed in their capacity to resolve cases quickly and at an affordable price, the extension of the scope to pre-contractual stages could result in longer durations of proceedings and higher costs. Furthermore, disputes arising from contractual obligations usually centre around purely legal questions, such as the execution of the contract or the interpretation of terms and conditions. In non-contractual disputes, where the underlying facts of the case are already in dispute, the ADR entities could only provide limited assistance due to their lack of investigative powers.

If the proposed coverage of non-contractual claims is maintained despite these reservations, it is essential to clarify that the ADR procedure is only open to claims accorded to individual consumer by other sources of law and does not allow for an *actio popularis*, meaning that an individual cannot access to an ADR procedure for the sole basis of the public interest. In other words, the ADR mechanism should only be available for claims that can also be pursued by the claimant through ordinary courts.

For example, the reference to European Union law on Unfair Commercial Practices (paragraph, point I of Article 2 ADR Directive as proposed by the European Commission) could lead to legal uncertainty in the absence of clarification. The Unfair Commercial Practices Directive (UCPD) offers different causes of action, not all of which are open to individual consumers. Any consumer can seek compensation, price reduction, or the termination of the contract for specific damages suffered from a violation of the directive (Article 11a UCPD). On the other hand, claims for injunctive relief are restricted to certain persons or organisations (Article 11 UCPD). The legislative objective behind this restriction is to prevent a flood of individual proceedings for injunctive relief. This objective should be maintained also in relation to ADR procedures.

Recommendation 2: The Directive should not create an obligation for member states to establish ADR entities that will have the competence to deal with disputes between consumers and non-EU traders.

The ADR entities are mainly financed by European businesses. It is not appropriate for ADR entities to be obliged to resolve disputes between a European consumer and a trader from a third country, as this could lead to a "free rider" issue. European companies would indeed pay for third-country companies' resolution of disputes by European ADR entities while potentially suffering from reputation damages resulting from the misconduct of third-party companies. At the same time, dealing with disputes that may involve languages, legislation and business practices that are not in line with EU law provisions may place undue burden on ADR entities.

Therefore, it should be ensured that ADR bodies have the freedom to decide whether or not to deal with complaints against businesses operating from third countries (ie outside the European Union/European Economic Area (EEA)).

*Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy.*