

CPC, ADR and ODR – Submission to EC public consultation on improving compliance with consumer rights across the EU

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Introduction

Insurance Europe welcomes the European Commission's upcoming evaluation of the Directive on alternative dispute resolution for consumer disputes (Directive 2013/11/EU) (ADR), regulations on online dispute resolution for consumer disputes (ODR) and regulations on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC). These legislative texts provide consumers with the reassurance that they have access to effective, speedy and cheap (or free) mechanisms to resolve their disputes and that there is appropriate oversight and coordination under the CPC if there are instances of EU-wide deficiencies.

Insurers welcome this extra layer of comfort for consumers, which sits in addition to the efforts they make to deal with their customers speedily, fairly and with transparency when seeking to settle a complaint or dispute. The ability of consumers to access dispute settlement mechanisms – whether external or within an insurer/intermediary – is seen as increasingly important. In many EU member states, there is continuous pressure on public funding of the legal system and less and less access to legal aid for all but the poorest members of society. This leads to pressure on the capacity of the legal system, to disproportionately long procedure times and to outcomes that do not match the needs of the affected.

Role of legal expenses insurance

In many countries, legal expenses insurers fill the gap that exists to enable customers to obtain redress. In the Netherlands, for instance, legal expenses insurers in most cases cover not only the hours for internal lawyers and legal professionals but also the costs of external legal representatives (even where the legal representative is chosen by the insured), as well as additional costs such as expertise costs, other registry charges and other legal expenses. Without legal expenses insurance, consumers would be dependent on public services and the subsidised legal assistance only available to those on lower incomes. Most consumers and businesses end up having to rely on regular lawyers or other legal practitioners for which the costs can mount up quite easily and which usually have no cap. This makes access to traditional legal services almost impossible for middle income groups.

Research has shown that the ADR and ODR solutions lead to more practical solutions and are perceived as fairer by litigants. Furthermore, ADR solutions are often more cost efficient and sustainable than traditional legal actions, as well as reducing the burden on the legal system.

Current provisions

Based on internal discussions with Insurance Europe's members, the national insurance associations, it seems most markets maintain appropriate provisions to ensure that customer complaints can be dealt with by the product provider/intermediary with a view to resolving them in a speedy, cost-efficient and satisfactory manner. In line with the ADR Directive, external independent mechanisms exist in member states to assist consumers where complaints have not been resolved to their satisfaction by the product provider/intermediary. The EC itself confirmed in its evaluation report of the ADR Directive in September 2019 that all member states have fully implemented its provisions and concluded that: "... EU consumers have access to high-quality ADR procedures across the Union and in virtually all retail sectors, regardless of whether the dispute is domestic or cross-border and whether the purchase was made online or offline".

The ADR Directive protects consumers in respect of both domestic and cross-border disputes and aims to ensure that most have access locally to a competent service that adheres to the principles of accessibility, expertise, independence, impartiality, transparency, effectiveness, fairness, liberty and legality as binding quality requirements for ADR entities.

In addition to the ADR Directive, the Mediation Directive continues to apply to cross-border commercial and civil disputes (Directive 2008/52/EC).

EIOPA has also issued guidelines on the correct and fair handling of complaints by insurance undertakings (EIOPA-BoS-12/069). A report by the Joint Committee of the European supervisory authorities (ESAs) on the evaluation of the application of these guidelines — and comparable guidelines for the securities and banking sectors — in January 2021 (JC 2021 24) concluded that the guidelines have contributed to a consistent approach to complaints-handling across all sectors and have led to better outcomes for consumers.

To the insurance industry's knowledge, access to alternative redress mechanisms involves addressing a complaint to the undertaking in question (product provider/intermediary) with the possibility of escalating to an external independent mechanism, such as an ombudsman, if no satisfactory solution is found. Where differences exist between markets, these relate to the timeframes for resolution of a dispute and whether complaints must first be made with the product provider/intermediary or can be made directly to an external, third-party independent mechanism, such as an ombudsman service. There is also some variation in the requirements for submitting complaints, whether these must be made in writing and what is meant by this (paper vs. electronic). However, it seems to be a universal approach (in line with the Insurance Distribution Directive) to include details in contract documentation, which must clearly set out the procedure for raising a complaint, and that such a mechanism is free or low cost for the customer raising the complaint, which is also in line with the ADR Directive. Since insurers value repeat custom, insurers generally aim to prevent customer complaints arising in the first place, and in any event to resolve customer complaints in a speedy, cost-efficient and satisfactory manner.

Overall, the implemented mechanisms work very well and allow sufficient flexibility to take into account national characteristics and differences.

National examples

Below are a few examples of how insurers continue to work to minimise any negative impact on consumers of finding themselves in dispute with an insurer/intermediary or needing to make a complaint:

- In France, members of the national insurance association, France Assureurs, have joined an association of insurance mediation (Association "[La Mediation de l'Assurance](#)"), and are committing to respecting the terms of its charter, which has been updated to fully comply with the ADR Directive. The association offers consumers a free ADR mechanism for out-of-court settlements in cases arising from the enforcement or the interpretation of insurance contracts. In 2017, 16 151 requests made by consumers were registered by the French Insurance Ombudsman, up 9%. The Ombudsman issued 3 280 decisions,

including 2 056 formalised opinions. In 24% of the cases, the opinions found fully or partially for the plaintiff. Decisions are followed by both parties in 99% of cases.

- In Estonia, the Estonian Conciliation Body (ADR), which was launched in 2011 and is administered by the Estonian Insurance Association (EKSL), means that an insurer involved in a case has to cover the costs of the case regardless of the result. It aims for win-win solutions and low costs for all parties involved.
- In Germany, the authority of the [Insurance Ombudsman](#) to make alternative dispute resolution decisions spares customers lengthy and expensive court proceedings.
- In Denmark, the Consumer Ombudsman has worked for good conditions for insurance consumers over the last five decades — together with the Insurance Complaints Board and the Financial Supervisory Authority — by issuing guidelines and statements. The Ombudsman has also played a role in class-action practices.

Ensuring consumer satisfaction

Consumers must be confident that, in the unlikely event that something goes wrong for them, they have recourse to a satisfactory mechanism for resolving their complaint. It is, however, doubtful that this is a significant factor in customers' buying decisions.

What is satisfactory depends on the complaint and its impact on the customer. For some complaints, relying on the internal complaints procedures of insurers/intermediaries may be sufficient. For others, that mechanism may not be satisfactory, and customers may need to rely on a mechanism overseen by an external third party such as an ADR entity.

The recent Directive on representative actions for the protection of the collective interests of consumers (Directive (EU) 2020/1828) will, in due course, act as an ultimate protection for consumers where several, comparable complaints that it has not been possible to resolve are picked up by entities for resolution through representative actions.

In many member states, the financial supervisor and/or consumer representative organisations may also be useful resources for information on where to get further assistance, while some even provide the ombudsman services with powers to settle customer disputes.

It seems reasonable to conclude that customers have a full choice of options from which to select their preferred choice of mechanism for the settlement of complaints or disputes, while ensuring the inclusion of customer access to the various dispute resolution mechanisms irrespective of financial or other vulnerabilities.

Insurance Europe does, however, see a lack of knowledge about ADR/ODR among consumers and businesses. Therefore, it would welcome more promotion of ADR/ODR, in the ways identified in questions 5 and 7 of the questionnaire. The use of ADR or ODR platforms tends to be less frequent in more complex cases — as insurance disputes often are — than, say, complaints about consumer goods purchased online. Insurance Europe would therefore welcome the European Commission doing more to promote ADR/ODR solutions that can also be used to resolve more complex disputes. For consumers, having access to effective and efficient dispute settlement mechanisms is the key to obtaining good quality, affordable, effective and swift solutions to their day-to-day problems.

Insurance Europe is the European insurance and reinsurance federation. Through its 36 member bodies — the national insurance associations — it represents insurance and reinsurance undertakings that account for around 95% of total European premium income.