

## Insurance Europe response to EC consultation on the application of Directive 2008/52/EC

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Related documents:	-		
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### Summary

Insurance Europe welcomes measures that aim to encourage consumers to resolve their conflicts through out-of-court proceedings. Insurance Europe is not aware of specific problems that arise from the directive on certain aspects of mediation in civil and commercial matters. There does not currently therefore appear to be a need for its adaptation.

Out-of-court dispute settlement schemes that offer a flexible, cheap and fast settlement procedure are valuable alternatives to court-based proceedings and benefit both insurers and consumers. Insurance Europe supports any initiative aimed at promoting the use of alternative dispute settlement (ADR), including mediation, in order to enhance redress for consumers in an effective and inexpensive way. Particularly important features of ADR mechanisms include:

- Access should be low cost or free to the consumer,
- The right of legal recourse for the consumer should be retained,
- Decisions should not be binding where they are the result of a purely consensual and voluntary procedure,
- Participation should be voluntary, and
- Frivolous or vexatious claims should not be covered.

As regards cross-border insurance disputes, they are dealt with efficiently through FIN-NET, the financial dispute resolution network of national out-of-court complaint schemes in the EEA that are responsible for handling disputes between consumers and financial services providers. The extent of FIN-NET's involvement in cross-border disputes has consistently increased (please refer to FIN-NET's annual reports). Better consumer awareness of FIN-NET would be welcomed to continue to increase its success. There does not however appear to be a need for changes to FIN-NET.

Insurance Europe responds as follows on a number of specific questions within the consultation:

■ **On question 6 which asks whether there should be EU-wide quality standards for mediation**

There currently appears to be little knowledge among consumers of the various types of ADR mechanisms, including mediation, available to them to resolve their disputes. In instances where there are disputes between consumers and their insurer, turning to ADR unfortunately is not always the impulse of consumers. Consumers tend to turn to court-based proceedings to resolve their disputes despite the less favourable cost and time implications for them because of their general awareness of it as a recourse.

The lack of awareness and understanding of various ADR mechanisms (including mediation) unfortunately also leads to distrust of mediation and doubt over its effectiveness and advantages to the consumer.

Insurance Europe would therefore welcome further consideration of minimum quality standards. Establishing minimum quality standards that are common throughout the EU may improve trust in mediation and lead to an increase in the use of mediation.

However, any quality standards considered must not slow down or complicate the mediation process which should remain an agreement entered into on a voluntary basis to settle a dispute with the assistance of a mediator. If mediation were slowed down or complicated, an increase in its uptake would not be achieved.

In addition, quality standards should not be at the expense of increased publicity about mediation. Better awareness and understanding of mediation and other forms of ADR are crucial to increase reliance on mediation and other ADR offerings available to consumers.

Importantly, Insurance Europe cautions against the promotion of uniformity of ADR mechanisms given the differing local legislations, systems and traditions on ADR mechanisms, etc. It should also be emphasised that there are insurance business lines which are very local by nature, such as, the retail insurance industry.

■ **On question 8 which asks whether there is interest in a more compulsory approach to mediation**

One of the main features of mediation is its voluntary character. It seems contradictory and even impossible to force parties to resolve their conflict by mediation. However, it is conceivable to encourage recourse to mediation by design, by for instance:

- Improving consumers' awareness of mediation procedures,
- Encouraging recourse to mediation before judicial proceedings. This is achieved, for instance, through court procedural rules, cost award implications, and court fee implications, and
- Make a psychological separation between courts and where mediation takes place.

The extent to which such encouragements are fair to the parties may depend on the type of dispute (its complexity) and type of claim (its relative size and the type of insurance in dispute) and on the tradition of each country.

Based on input received from its members, Insurance Europe does not see any need for adaptations to the 2008 mediation directive. The directive has been transposed and in itself does not need reviewed. Where there is a need for reconsideration is in awareness raising about mediation.

■ **On question 15 which asks how the mediation-culture could be improved**

Insurers are aware of the benefits of recourse to ADR mechanisms, including mediation, over court-based proceedings. The benefits tend to be seen not only in terms of efficacy in time and expense of resolving a dispute satisfactorily, but also in terms of possibly preserving the commercial relationship and safeguarding the insurer's reputation. For instance, in some member states, legal expenses insurance



already covers the costs of mediation. In Spain, mediation has been included as an ADR system in the insurance legislation.<sup>1</sup>

Possible ways in which the mediation-culture could be further improved include:

- Increasing awareness of mediation, for instance through the court system (see also response to question 8),
- Publicising the benefits of mediation to consumers, and
- Improving teaching of conflict resolution in schools so as to teach young people how to resolve conflicts: they are the future users of mediation.

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