GDV German Insurance Association

POSITION PAPER

Position Paper

of the German Insurance Association (GDV)
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on the trilogue negotiations to the proposal amending *inter alia* Directive 2013/11/EU on alternative dispute resolution for consumer disputes

The German insurance industry strongly supports the concept of an efficient alternative dispute resolution system for consumer claims. The German insurance ombudsman, founded in 2001, is a good example of a successful and well-received alternative dispute resolution body. However, we are concerned that some of the EU Commission's proposals would jeopardize the ability of ADR entities to resolve disputes swiftly and efficiently.

We support the EU Commission's objective to eliminate redundant bureaucracy, *inter alia* by abrogating the ODR Regulation. However, regarding the extension of the scope of the ADR Directive, the proposal does not consider all implications that this approach would entail. Whereas including disputes arising from pre-contractual obligations could be beneficial for consumers and indeed are already in the remit of the German insurance ombudsman, we have strong reservations against including disputes on non-contractual consumer rights in the scope of the Directive. Therefore, the following considerations should be taken into account in the trilogue negotiations:

GDV

Gesamtverband der Deutschen Versicherungswirtschaft e. V.
German Insurance Association
Wilhelmstraße 43 / 43 G, 10117 Berlin
Postfach 08 02 64, D-10002 Berlin
Phone: +49 30 2020-5000 · Fax: +49 30 2020-6000

Rue du Champ de Mars 23, B-1050 Brussels
Phone: +32 2 28247-30 · Fax: +49 30 2020-6140
ID-number 6437280268-55
www.gdv.de

Contact
Recht / Compliance / Verbraucherschutz

E-Mail
recht@gdv.de

Changes to the scope of application

If an extension of the scope is considered, it should – in line with the Council's position – only include disputes arising from pre-contractual or contractual obligations. ADR is not a suitable forum to resolve disputes arising from non-contractual situations.

Background

The ombudsman responsible for insurance matters in Germany has established himself as an out-of-court dispute resolution body and has proved his worth. He is well received by consumers and companies alike. Thanks to his high level of expertise in insurance contract law, he can resolve the proceedings he receives quickly, effectively, and cost-effectively. Statistics show the ombudsman has consistently received between 11,000 and 14,000 admissible complaints per year in recent years. ADR should stay an affordable, simple and fast way for the consumers to resolve disputes.

Extension of the scope to disputes arising from non-contractual situations

However, we are concerned that an extension of the scope to **non-contractual** rights would lead to a weakening of ADR entities.

The effectiveness and acceptance of the ADR entities and their decisions are based on their high level of knowledge and expertise in their areas of competence. Their success is largely due to this focus – in the case of the German insurance ombudsman on insurance contract law. Removing this focus by extending the scope of ADR to non-contractual rights would overburden these entities, create longer durations of proceedings and higher costs.

Furthermore, an important factor contributing to the speed and efficiency of ADR entities is the restriction of the admissible evidence in the procedure. The German insurance ombudsman, for instance, does not take evidence beyond documentary evidence and the submissions of the parties. In contractual disputes, this is in most cases sufficient since these disputes generally arise from legal questions, such as the interpretation of contractual terms. However, in non-contractual disputes, where the underlying facts are already in dispute, the ADR entities could only provide limited assistance due to their lack of investigative powers.

Moreover, the proposal of the EU Commission would open ADR procedures to an actio popularis. Without the precondition of a (pre-) contractual relationship between the consumer and the trader, ADR proceedings could be initiated by anyone, even by a claimant, who has no personal stake in the outcome himself.

These concerns are echoed by consumer protection organisations and by the ADR

entities themselves.[1] The extension of the scope to non-contractual disputes would blur the distinction between individual dispute resolution (which is the task of ADR entities) and market surveillance (which is the task of supervisory authorities and consumer protection organizations). The proposal would overburden ADR entities with responsibilities which they are not suited for and would impair their ability to perform the tasks for which they were originally conceived.

The position of the Council – a practicable approach to extend the scope without overburdening the ADR entities

The extension of the scope to disputes arising from **pre-contractual** obligations proposed by the Council could be sensible from the perspective of consumers and ADR-entities alike. Considering the close link between pre-contractual obligations and the relevant contract law, such an extension could enable more consumers to benefit from the expertise of the ADR entities in their respective areas of responsibility. The German insurance ombudsman has got this mandate already today.

The EP-approach – a first step in the right direction but not far enough

The European Parliament's (EP) report addresses the above mentioned concerns only in part. With regard to alleged unfair commercial practices, the EP proposes that claims arising from non-contractual situations should only be admissible, if the unfair practice resulted in material or immaterial damage to the claimant (AM 29). This is important, because otherwise the ADR procedure would be open to an actio popularis.

However, the EP position limits this precondition to claims arising from alleged unfair commercial practices. It would not apply to non-contractual complaints on other issues (e. g. discrimination on the basis of nationality or place of residence, or access to services). On these issues, the risk of the actio popularis would, therefore, remain.

Language of ADR proceedings

The EP report contains a further point of concern. The EP proposes that the language of procedures in cross-border cases should be the language of the Member State in which the consumer is resident (AM 45). This would not be practicable. Considering the variety of official languages in the European Union, it would be impossible for ADR entities to provide the necessary translation services.

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[1] See for example „Gemeinsamer Brief zu geplanten Anpassungen an der Richtlinie zur außergerichtlichen Streitbeilegung (2013/11/EU) und der Empfehlung über Qualitätsanforderungen an Streitbeilegungsverfahren von Online-Marktplätzen und Wirtschaftsverbänden“ of 21 march 2024.

Contact:
Recht / Compliance / Verbraucherschutz

E-Mail:
recht@gdv.de