

**Comments Template on EIOPA-CP 11/010a and EIOPA-CP 11/010b
 Consultation Paper on the Proposal for Guidelines on Complaints-Handling by Insurance
 Undertakings and Draft Report on Best Practices by Insurance Undertakings in handling
 complaints**

**Deadline
 31 January 2012
 12:00 CET**

Company name: Association of Mutual Insurers and Insurance Cooperatives in Europe, AMICE

Disclosure of comments: EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Public

Please follow the instructions for filling in the template:

- ⇒ Do not change the numbering in column "Reference", or any other formatting in the file.
- ⇒ Please fill in your comment in the relevant row. If you have no comment on a paragraph, keep the row empty. Please do not delete rows in the table.
- ⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below.
 - If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies.
 - If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment relating to the corresponding paragraph.

Please send the completed template to CP-010@eiopa.europa.eu, in MS Word Format, (our IT tool does not allow processing of any other formats).

The paragraph numbers and questions below correspond to document no. EIOPA-CP-11/010a.
 There is an additional section at the end of the table for general comments on the draft Best Practices Report (document no. EIOPA-CP-11/010b).

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Reference	Comment
General Comment	<p>AMICE welcomes the opportunity to reply to EIOPA's consultation on its proposed guidelines on complaints handling by insurance undertaking and its draft report on best practices.</p> <p>From the outset, AMICE would like to point out that most mutual/cooperative insurers distinguish between the member status (which means that the client must adhere to the bylaws of the company) and the insurance contact. As a member-policyholder, the client actually participates in the governance of 'its' insurer and by the same token, his participation (at the General Meetings, for instance) implies that he agrees with the applicable contractual provisions. In other words, he is more than a simple consumer.</p> <p>Insurance contracts used by (some) mutuals may show some differences to those used by plc-type insurers:</p> <ul style="list-style-type: none"> • They may include the unilateral right by the (mutual) insurer to terminate the contract once the customer loses his/her right to be a member of the mutual – e.g. in the case of a professional mutual when the customer ceases to be a member of that profession [notary, pharmacist, architect, ...]) • They may include provisions about the right of the mutual to call for supplementary calls/contributions (in non-life insurance, within the maximal limits indicated in the contracts) • They may include provisions about the payment of an "entrance fee" to the mutual. <p>In addition, the insurance contracts of mutual and cooperative insurers also include a paragraph on complaints: how they are handled (e.g. through the mutual-specific solution of a committee made of members' representatives, by an in-house ombudsman, etc.).</p> <p>On the other hand, AMICE is aware of the adoption, in some MS, of a consumer protection legislation in the field of financial services. This raises the question of the legal status of these proposed guidelines by EIOPA. We would therefore invite EIOPA to specify the nature of their interaction with current national provisions (or national supervisors). Moreover, EIOPA would need to address the issue of enforcement, which should be harmonised across the EU.</p> <p>Finally, the members of AMICE note that the current proposed scope of the guidelines is limited to insurance undertakings which seems somewhat unbalanced if one considers the wide array of operators in the field of financial services. In order to level the playing field, AMICE suggests that the</p>

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	EIOPA draft guidelines initiative be raised with the EBA, so as to include all financial and credit institutions.	
3.1.		
3.2.		
3.3.	<p>See general comment.</p> <p>EIOPA must specify the legal value of these guidelines on complaints-handling, i.e. provide clarification as to whether these guidelines are intended to be mandatory or not and if yes, to whom (insurance undertakings or national supervisors).</p>	
3.4.		
3.5.		
3.6.		
3.7.	<p>AMICE thinks that the definition of the complaint as it is presented by EIOPA in its indicative definitions, i.e. ‘an expression of dissatisfaction addressed to an insurance undertaking by a person relating to the insurance contract or service he/she has been provided with’ is very broad, in fact too broad, for an activity like insurance. The handling and settling of claims is in its nature a discussion/bargaining process between insurer and client. It should,for example, be assured that the non-acceptance of a claims settlement offer made by the insurer (initially and/or in the negotiation phases) is not as such a complaint.</p> <p>Defining each “expression of dissatisfaction” immediately as a complaint (subject to the defined complaints procedures) could deprive insurers from applying an appropriately differentiated treatment to the various comments received from customers and could, through clogging up the real complaints handling procedures, at the end bring negative results for clients.</p> <p>We suggest therefore to review and revise the definition, also taking into account the legal and</p>	

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	supervisory rules existing in some Member States.	
3.8.	Concerning the second part of this paragraph, AMICE's members do not believe it is feasible for an insurance undertaking to reply on behalf another financial institution for which that insurance undertaking has no legal or regulatory responsibility.	
3.9.		
3.10.	The members of AMICE would like more explanations from EIOPA on the "complaint management policy". They are of the opinion that insurance undertakings should be free to organise complaints-handling in the way that suits best their business model and their organisation. As mentioned in the general introduction, some mutual insurers already have an in-house ombudsman function, in charge of complaints-handling, who has the authority to speak on behalf of the company, and who reports directly to senior management or to the Annual General Meeting. Others have installed arbitration committees (presided by independent experts, e.g. retired judges) whose judgements bind the company, but leave recourse open for the customer.	
3.11.		
3.12.	AMICE's members believe that EIOPA should respect an undertaking's senior management's choice as regards appropriate complaints' requirements.	
3.13.		
3.14.		
3.15.	Bullet 3 (i). Our members find the granularity of this guideline inappropriate.	
3.16.		
3.17.	Comments are not being sought on this paragraph at this stage	
3.18.	Comments are not being sought on this paragraph at this stage	

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3.19.		
Q1. – on Impact Assessment		
Q2.– on Impact Assessment		
Q3.– on Impact Assessment		
Q4.– on Impact Assessment		
Best Practices Report Comments (EIOPA-CP-11/010b)		