

**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:	CEA – Insurers of Europe	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. <i>Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.</i>	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>The CEA welcomes the opportunity to respond to EIOPA’s consultation on its proposed guidelines on complaints-handling by insurance undertakings and its draft report on best practices. The CEA has elected not to answer directly the questions contained in the consultation document, but rather to provide general comment on its contents.</p> <p>The CEA would firstly wish to raise our concerns over the legal status of the proposed guidelines. We find it difficult to make a relevant contribution to this discussion without knowing the full extent of the consequences of the proposed guidelines, and their interaction with national legislation or with national supervisors’ guidelines, particularly where there may be any form of conflict or contradiction between them.</p> <p>In addition, it is unclear how national supervisors would ensure that the guidelines are enforced in the same manner towards insurance undertakings from other EU Member States who are carrying out business in their market as they are towards national insurance undertakings.</p> <p>The CEA would also call into question the legal basis for EIOPA’s issuance of these guidelines and the extent to which such a task falls within the remit of EIOPA’s tasks and responsibilities. Article 9(2) of the EIOPA regulation refers to adopting guidelines and recommendations with a view to promoting the “convergence of regulatory practice”; however, we fail to see how this relates to EIOPA’s current work on complaints-handling. In fact, EIOPA has cited various recitals and articles of the Solvency II Directive as a further basis for these guidelines. However, the CEA questions the rather broad interpretation that has been given by EIOPA to these provisions. For example, recital 16 of the Solvency II Directive states that “the main objective of insurance and reinsurance regulation and supervision is the adequate protection of policyholders and beneficiaries....” We would question whether the “adequate protection of policyholders and beneficiaries” extends to the processing of consumer complaints. Moreover, the reference to reinsurance in this same provision would suggest that it is directed more towards the prudential and financial capacity of the firms concerned to meet their commitments vis-à-vis the policyholders and beneficiaries. In addition, Articles 41 and 46 of Solvency II provide for both an effective system of governance and internal control system. We would also question whether the scope of these obligations can be interpreted to apply to all areas,</p>	

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including consumer complaints handling which is something that is clearly not specific to the insurance sector.

Furthermore, the proposed guidelines are subject to a “comply or explain” procedure, which as yet remains unclear and of which EIOPA is, in fact, still engaging in further internal work on its practical implications. Questions remain, for example, as to whether this “comply or explain” procedure will be a duty at the level of the insurance undertaking, the supervisor or the Member State itself. We wish to caution against the development or adoption of any such guidelines before all of these practical implications have been sufficiently clarified.

In light of the principle of proportionality, which is one of the fundamental pillars of the Solvency II reform, we believe that, in some respects, these draft guidelines appear to be too far-reaching and do not sufficiently take this principle into account. We believe that guideline number 4, for example, on reporting to the competent authority on complaints received would prove to be administratively burdensome for insurance undertakings without adding any value to the authorities. Complaints occur in every business and the occurrence of complaints does not mean that the business is unsound or in violation of any legal provisions. Furthermore, there already exists an obligation on insurance undertakings to report events that might affect their position, for example risk of loss of reputation and high unexpected costs. The reporting requirement may also lead to potential attempts to discredit an undertaking in the eyes of the authorities by unfounded complaints submitted to the undertaking.

However, if EIOPA retains this obligation for insurance companies to produce statistics and to report the number of complaints received to competent authorities, there is a clear need for a very precise definition of what exactly constitutes a “complaint”. It is important to distinguish between a simple expression of dissatisfaction with a contract/service and a genuine complaint requiring an appropriate remedy. We would therefore call on EIOPA to include a more precise definition of a “complaint”.

We also note that EIOPA proposes a definition of “consumer” in its guidance, which it aims to make specific to insurance. However, we feel that the definition of consumer should be consistent with the definition that is to be found at EU level under several different directives, ie any natural person who, in contracts covered by that directive, is acting for purposes which are outside his trade, business or

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profession (this is the definition used in Directive 2002/65/EC concerning the distance marketing of consumer financial services, Directive 2000/31/EC on electronic commerce and Directive 2005/29/EC concerning unfair business-to-consumer commercial practices, all of which apply to insurance activity). The introduction of a new definition that is different to that found under EU legislation would prove confusing to both professionals and consumers.

In relation to the information provided to consumers, we believe that the phrase used in guideline number 6 – “when acknowledging receipt of a complaint” – is not sufficiently clear, as it appears to suggest that the insurance undertaking’s entire complaints handling process should be provided to the consumer each time a complaint is simply received. Aside from being overly-burdensome, we believe that information on the “complaints-handling process” may result in unduly technical documents being provided to consumers and would therefore suggest that the wording be amended to require insurers to provide 'appropriate written information regarding its internal processes'. In this respect, consumers would benefit from having one single information source and would refer EIOPA to Articles 183 and 185 of the Solvency II Directive, the purpose of which is to inform the policy holder of the arrangements for handling complaints, including the existence of a complaints body, but does not impose conditions on the way to handle these complaints or their reporting or internal follow-up.

In addition, the first bullet point of guideline number 7 suggests that insurers will have to gather and investigate all relevant evidence and information regarding the complaint. This could be unduly burdensome on insurance undertakings and it is suggested that this guideline should allow for some proportionality in the amount of evidence and information that has to be gathered. Furthermore, in relation to guideline number 3, EIOPA should clarify that the register referred to is to be maintained by the insurance undertaking itself and that it is not intended to refer to a national register of complaints.

Finally, the CEA would suggest that the proposed guidelines should take into account the recently published European Commission proposal for a directive on ADR, which would also apply to insurance business.

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3.1.	<p>As stated in the CEA's comments under "General Comment", the CEA would into question the legal basis for EIOPA's issuance of these guidelines and the extent to which such a task falls within the remit of EIOPA's tasks and responsibilities. Article 9(2) of the EIOPA regulation refers to adopting guidelines and recommendations with a view to promoting the "convergence of regulatory practice"; however, we fail to see how this relates to EIOPA's current work on complaints-handling. In fact, EIOPA has cited various recitals and articles of the Solvency II Directive as a further basis for these guidelines. However, the CEA questions the rather broad interpretation that has been given by EIOPA to these provisions. For example, recital 16 of the Solvency II Directive states that "the main objective of insurance and reinsurance regulation and supervision is the adequate protection of policyholders and beneficiaries....." We would question whether the "adequate protection of policyholders and beneficiaries" extends to the processing of consumer complaints. Moreover, the reference to reinsurance in this same provision would suggest that it is directed more towards the prudential and financial capacity of the firms concerned to meet their commitments vis-à-vis the policyholders and beneficiaries. In addition, Articles 41 and 46 of Solvency II provide for both an effective system of governance and internal control system. We would also question whether the scope of these obligations can be interpreted to apply to all areas, including consumer complaints handling which is something that is clearly not specific to the insurance sector.</p>	
3.2.	See CEA's comments under "General Comment"	
3.3.	See CEA's comments under "General Comment"	
3.4.	See CEA's comments under "General Comment"	
3.5.	See CEA's comments under "General Comment"	
3.6.	See CEA's comments under "General Comment"	
3.7.	<p>As stated in the CEA's comments under "General Comment", there is a clear need for a very precise definition of what exactly constitutes a "complaint". It is important to distinguish between a simple expression of dissatisfaction with a contract/service and a genuine complaint requiring an appropriate remedy. We would therefore call on EIOPA to include a more precise definition of a "complaint".</p> <p>We also note that EIOPA proposes a definition of "consumer" in its guidance, which it aims to make</p>	

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	<p>specific to insurance. However, we feel that the definition of consumer should be consistent with the definition that is to be found at EU level under several different directives, ie any natural person who, in contracts covered by that directive, is acting for purposes which are outside his trade, business or profession (this is the definition used in Directive 2002/65/EC concerning the distance marketing of consumer financial services, Directive 2000/31/EC on electronic commerce and Directive 2005/29/EC concerning unfair business-to-consumer commercial practices, all of which apply to insurance activity). The introduction of a new definition that is different to that found under EU legislation would prove confusing to both professionals and consumers.</p>	
3.8.	See CEA's comments under "General Comment"	
3.9.	See CEA's comments under "General Comment"	
3.10.	See CEA's comments under "General Comment"	
3.11.	See CEA's comments under "General Comment"	
3.12.	<p>As stated in the CEA's comments under "General Comment", EIOPA should clarify that the register referred to is to be maintained by the insurance undertaking itself and that it is not intended to refer to a national register of complaints.</p>	
3.13.	<p>As stated in the CEA's comments under "General Comment", we believe that guideline number 4 would prove to be administratively burdensome for insurance undertakings without adding any value to the authorities. Complaints occur in every business and the occurrence of complaints does not mean that the business is unsound or in violation of any legal provisions. Furthermore, there already exists an obligation on insurance undertakings to report events that might affect their position, for example risk of loss of reputation and high unexpected costs. The reporting requirement may also lead to potential attempts to discredit an undertaking in the eyes of the authorities by unfounded complaints submitted to the undertaking.</p>	
3.14.	See CEA's comments under "General Comment"	

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3.15.	As stated in the CEA's comments under "General Comment", we believe that the phrase used in guideline number 6 – "when acknowledging receipt of a complaint" – is not sufficiently clear, as it appears to suggest that the insurance undertaking's entire complaints handling process should be provided to the consumer each time a complaint is simply received. Aside from being overly-burdensome, we believe that information on the "complaints-handling process" may result in unduly technical documents being provided to consumers and would therefore suggest that the wording be amended to require insurers to provide 'appropriate written information regarding its internal processes'. In this respect, consumers would benefit from having one single information source and would refer EIOPA to Articles 183 and 185 of the Solvency II Directive, the purpose of which is to inform the policy holder of the arrangements for handling complaints, including the existence of a complaints body, but does not impose conditions on the way to handle these complaints or their reporting or internal follow-up.	
3.16.	As stated in the CEA's comments under "General Comment", the first bullet point of guideline number 7 suggests that insurers will have to gather and investigate all relevant evidence and information regarding the complaint. This could be unduly burdensome on insurance undertakings and it is suggested that this guideline should allow for some proportionality in the amount of evidence and information that has to be gathered.	
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	
3.19.	See CEA's comments under "General Comment"	
Q1. – on Impact Assessment	See CEA's comments under "General Comment on the Guidelines"	
Q2. – on Impact Assessment	See CEA's comments under "General Comment on the Guidelines"	
Q3. – on Impact Assessment	See CEA's comments under "General Comment on the Guidelines"	

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Q4. – on Impact Assessment	See CEA's comments under "General Comment on the Guidelines"	
Best Practices Report Comments (EIOPA-CP-11/010b)	See CEA's comments under "General Comment on the Guidelines"	