

**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:	Fédération Française des Sociétés d'Assurance (FFSA)	
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 <b>Public</b> in the column to the right and by inserting the word <b>Confidential</b>.</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](mailto: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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<b>Reference</b>	<b>Comment</b>	
General Comment	<p>FFSA members are quite aware of the importance of an effective complaints handling to preserve good relationships with their clients. That is why they have put in place since 1993 a mechanism making it possible for the policy holders to benefit from a mediation process in order to settle their disputes.</p> <p>Complaints handling can also be a matter of competition as it takes part in the satisfaction of the client and in his or her fidelity vis a vis the insurer. This is why the FFSA considers that complaints handling organization should be kept under review of the insurance undertakings themselves in order to allow them to adapting this organization, for more efficiency and competitiveness, to their size, activity and the type of clients they have.</p> <p>Beyond that, the FFSA has a concern with the legal basis for Eiopa's intervention in the field of complaints handling as this matter is not specific to the insurance activity and is only touched on in insurance directives through measures concerning pre-contractual information.</p> <p>Article 9(2) of EIOPA regulation refers to adopting guidelines with a view to "promoting the safety and soundness of markets and convergence of regulatory practice" but we actually fail to see how this relates to Eiopa's current initiative on complaints –handling. Moreover, the impact assessment provided in EIOPA's proposal does not give any evidence of a prudential necessity for the supervisor to regulate on this subject.</p>	
3.1.	<p>The recitals EIOPA uses to support its guidelines raise a number of questions:</p> <p>Having regard to article 16 of the EIOPA regulation, the FFSA wonders how EIOPA cooperates with EBA and ESMA in a view "to establishing consistent, efficient and effective supervisory of complaints handling in the ESFS". The FFSA would not understand that complaints handling guidelines are restricted to insurance sector only.</p> <p>The FFSA also wonders what is the Union law in this matter (except articles 183 and 185 of Directive 2009/138/EC which deal with <u>information</u> to be given about arrangements for handling complaints and the existence of complaints body if any, <u>but not</u> with procedures to put in place or reporting or internal follow-up)</p>	

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	<p>Regarding recital 16 of Directive 2009/138/EC, the FFSA is far from being convinced that “the adequate protection of policyholders and beneficiaries” refers to consumer protection in general and complaints handling in particular. The reference to reinsurance in this same provision would suggest that it directed more towards the prudential and financial capacity of the firms to meet their commitments vis a vis policyholders and/or beneficiaries.</p> <p>Having regards to articles 41 and 42 of the Directive 2009/138/EC, the FFSA calls into question the extension of general governance and internal control requirements to complaints handling issue while this issue is likely to affect every professional sectors whatever they are and not only insurance one. Proposed governance and internal control requirements should prove to be administratively burdensome and costly for insurance undertakings and thus for the clients and the FFSA does not see the reason why insurance sector should be the only one submitted to them.</p> <p>On this point, the FFSA would like to remind EIOPA with recital 12 of the EIOPA regulation : “The Authority should take into account of the impact of its activities on competition and innovation within the internal market, on the union’s global competitiveness, on financial inclusion, and on the Union’s new strategy for jobs and grow”</p> <p>Regarding articles 183 and 185 of the directive 2009/138/EC, the FFSA would like to stress that the purpose of these articles is to inform the policyholder about the arrangements for handling complaints and not to place conditions on the way to handle these complaints.</p>	
3.2.		
3.3.		
3.4.	See observations under 3.1	
3.5.		
3.6.	<p>EIOPA’s proposal allows “national legal or regulatory requirements to go into further detail than the guidelines”. Firstly it is not clear for FFSA how national competent authority could take legal or regulatory requirements on the basis of EIOPA’s guidelines which have no force of law or regulation . Beyond that, it seems to us that this provision would clearly go against EIOPA’s mission to “ensuring the common, uniform and consistent application of union law” .</p>	

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3.7.	<p>The FFSA considers that the definitions provided in EIOPA's proposal should be consistent with articles 183 and 185 of the directive 2009/138/EC.</p> <p>In this respect, the proposed definition of complainant should make a distinction between non life insurance where the complainant is the policy holder only and life insurance where the complainant can be the policyholder, the life –assured or the beneficiary.</p> <p>European law has already provided for a definition of the “consumer” under several directives (ie directive 2000/31/EC on electronic commerce, directive 2002/65/EC concerning the distance marketing of consumer financial services, directive 2005/29/ EC concerning unfair business to consumer commercial practices) which apply to insurance activity. Introducing a quite different definition of consumer in the context of EIOPA guidelines about insurance complaints handling would prove extremely confusing to both professionals and consumers themselves and once more time would be contradictory with the article 16 of EIOPA regulation which aims to “ensuring the common, uniform and consistent application of union law”.</p> <p>The FFSA would also like to point out the need for a precise definition of what constitutes a complaint. It is important to distinguish between a simple expression of dissatisfaction and a genuine complaint requiring an appropriate treatment.</p>	
3.8.		
3.9.		
3.10.	<p>From a legal point of view (i.e in comparison with articles 183 and 185 of the directive 2009/138/EC), the FFSA considers that the guideline 6 only (Information to consumers) is likely to be justified. Nevertheless, in the case where the other guidelines would be maintained, the FFSA has the following remarks (see from 3.10 up to 3.16)</p> <p>Complaints management policy: Insurance undertakings should be able to adapt complaints management policy to their size, activity and the type of clients they have. Allowing national authorities to adopt more far-reaching and detailed guidelines would go against efficiency and competition.</p>	
3.11.	The FFSA supports the principle of a complaint management function. However, we consider that this	

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	<p>principle should not prevent from using other possibilities to manage complaints. A great number of complaints can be handled at the point of sale for example.</p> <p>Imposing to appeal systematically to the complaint manager would be, in some cases, very heavy and would delay the complaint settlement.</p> <p>Besides, the FFSA wonders about the nature of the conflicts of interests mentioned in this guideline. Actually, the fact that the insurer disagrees on a client's complaint cannot be qualified as a conflict of interest between the insurer and the client. From this point of view, a distinction has to be made between internal complaint management function and external alternative dispute resolution like ombudsman or mediation system.</p>	
3.12.	<p>Registration and reporting : The FFSA considers that these guidelines are too far-reaching and do not sufficiently take the principle of proportionality into account. Registration and reporting of all complaints received will be costly and administratively burdensome for insurer while the result (the total number of complaints) will not be significant. When complaints occur about a premium rise or a guarantee reject for example, this occurrence does not necessarily mean that the business is unsound or in violation of any legal provision.</p> <p>Besides, the FFSA wonders about the nature of "classes" under which complaints should be differentiated.</p>	
3.13.	See above	
3.14.	<p>Internal follow-up : The FFSA fears that the obligation to analyze on an on-going basis complaints handling data will prove burdensome and disproportionate without allowing a significant detection of recurring or systemic problems. In this respect, we would like to stress again that if some complaints can be justified, others are not. Furthermore, there already exists an obligation on insurance undertakings to report events that might affect their position .</p>	
3.15.	<p>Information to consumers: FFSA can support the principles settled in this guideline with the following reserves:</p> <ul style="list-style-type: none"> <li>- In the title and the text, the term "consumer" should be replaced by the term "policyholder"</li> </ul>	

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	<p>to be consistent with articles 183 and 185 of the directive 2009/138/EC</p> <ul style="list-style-type: none"> <li>- In the case where the final decision is favorable to the policyholder or in life insurance to the life insured or beneficiary, the FFSA does not understand why the insurance undertaking should remind the complainant about possible subsequent means of redress.</li> </ul>	
3.16.	Procedures for responding to complaints : the FFSA can support this guideline if it makes it clear that in case of decision favorable to the complainant, there is no need to explain the decision and set out the option to maintain the complain.	
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.		
Q1. – on Impact Assessment		
Q2.– on Impact Assessment		
Q3.– on Impact Assessment		
Q4.– on Impact Assessment		
Best Practices Report Comments (EIOPA-CP-11/010b)		