

**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:	German Insurance Association	
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.**
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 - **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.**
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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 German insurance industry welcomes the current efforts by EIOPA to establish effective complaints management systems for insurance undertakings. Effective complaints handling can contribute to stabilizing vulnerable customer relations and restoring customer satisfaction in the long run. Moreover, active complaints handling provides significant information on the strengths and weaknesses of undertakings from the customers' perspective. These findings provide undertakings with the chance to respond to critical issues and thus enable them to meet the requirements of their customers. This is particularly important for insurance undertakings, since the business model of insurers is based on the confidence of policyholders in their insurers.</p> <p>Therefore, any means which are appropriate to further optimize complaints handling by insurance undertakings are also in the interests of the German insurance industry. The "Proposal for Guidelines on Complaints-Handling by Insurance Undertakings" as well as the "Draft Report on Best Practices by Insurance Undertakings in handling complaints" are therefore basically reasonable.</p> <p>However, it has to be taken into account that detailed provisions on complaints handling will deprive insurance undertakings of a major distinguishing feature. Having in place an excellent complaints management policy gives undertakings a competitive advantage over competitors and at the same time provides huge benefits to customers. Excessive regulations, however, create additional bureaucracy as well as extra costs. Moreover, they are likely to prevent new innovative approaches.</p> <p>In addition to the concerns mentioned above, there are also some legal concerns, since the proposals constitute an interference with free enterprise. In the first instance, it is the task of the undertakings to organize their internal procedures. The complaints management policy of insurance undertakings, which represents a means of customer retention, is no exception. If the freedom of undertakings to design such means is limited, the degree of proportionality always has to be taken into account when stipulating such provisions.</p> <p>Moreover, it is questionable whether EIOPA has the competence to stipulate such detailed provisions on complaints handling. Even though Directive 2009/138/EC aims at ensuring adequate protection of policyholders and beneficiaries (recital 16), and Article 183 (1) as well as Article 185 (2 I) of the Solvency II Framework Directive explicitly refer to the term "complaints body", it cannot be concluded from these provisions and from the other provisions underlying the Guidelines (Articles 41 and 46 of the Solvency II Framework Directive) whether and how a corporate complaints</p>

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	<p>management policy can and should be established in detail by EIOPA. Moreover, it cannot be concluded from the provisions mentioned above that all undertakings shall be obliged to have in place an internal complaints management policy. Accordingly, external complaints handling would also be acceptable. A very effective and independent complaints body was created in Germany more than 10 years ago by establishing the so-called <i>Versicherungsbundsmann e.V.</i> (German insurance ombudsman).¹</p> <p>The “Proposal for Guidelines on Complaints-Handling by Insurance Undertakings” as well as the “Draft Report on Best Practices by Insurance Undertakings in handling complaints” are not in line with already existing or intended regulations with respect to the Insurance Mediation Directive (IMD) and PRIPs. However, the proposals should be in line with these regulations to prevent ambiguities.</p> <p>Finally, it shall be ensured that other financial services industries are obliged to meet the same standards regarding complaints handling as the insurance industry, if applicable. It shall be made sure that a level playing field can be created.</p> <p>So far, the proposed Guidelines are not explicitly restricted to direct insurance undertakings. However, a complaints management policy focusing on complaints by consumers is only reasonable with respect to direct insurers. The Guidelines should clearly emphasize this fact.</p> <p>Article 29 (3) of the Solvency II Framework Directive stipulates the principle of proportionality. According to this Article, Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance undertaking. This principle shall also be taken into account when trying to further optimize complaints handling by insurance undertakings. This is particularly important in business areas in which consumer complaints are excluded or very rare due to the design of the product, for instance in occupational pension schemes, in case of major risks as well as in case of short-term insurance policies. The principle of proportionality should therefore also be mentioned in the Guidelines.</p>	
3.1.		
3.2.		
3.3.		

¹ For more details please refer to *Hirsch*, The German insurance Ombudsman, *ZVersWiss* 2011, p. 561 ff.

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3.4.		
3.5.		
3.6.		
3.7.	<p>Definitions included in the Guidelines</p> <p>a) Definitions of “complaint” and “complainant”</p> <p>The Guidelines set out provisions on complaints handling but do not provide adequate definitions of the terms “complaint” and “complainant”. Respective definitions are only found in the introduction of the Guidelines (cf. No. 3.7.). However, this is not sufficient. If the Guidelines shall be comprehensible, they need to explain the significant terms in the text. Otherwise there is the risk that the terms may be interpreted differently, which would be contrary to the objective of harmonizing regulatory practices of national supervisory authorities. However, this is particularly difficult with respect to the term “complaint”, since the boundaries between simple “requests” and “complaints” are blurred. For instance, what are simple requests? What shall be done in case of problems of comprehension? When is a request actually a complaint in terms of the Guidelines? Shall this only apply if customers complain about inadequate complaints handling by insurers? Achieving high customer satisfaction is an essential objective of undertakings anyway. Therefore, it shall be left to the insurance undertakings to decide how they will handle “complaints”. Juridification, as intended by EIOPA, however, is rather counterproductive in this respect, particularly if no satisfying definition of the term “complaint” will be provided, which is actually assumed.</p> <p>Moreover, dissatisfaction of policyholders shall be differentiated from the actual annoyance regarding an insurance contract and from incorrect complaints handling by insurers. Therefore, we suggest replacing the term “dissatisfaction” by a stronger term such as “anger”, for instance.</p> <p>Furthermore, only complaints of persons who are presumed to be eligible to have a complaint related to a certain product or service of an individual insurance undertaking shall be covered for reasons of legal certainty.</p> <p>We therefore suggest amending the provision as follows:</p> <p><i>A policyholder, insured person, beneficiary and in some jurisdictions, injured third party who is presumed to be eligible to have a complaint related to an insurance product or service considered by an insurance undertaking and has already lodged a complaint.</i></p>	

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	<p>Nonetheless, we would like to point out once again in this context that it shall be left to the undertakings to actually specify the term "complaint".</p> <p>b) Definition of "consumer"</p> <p>We suggest using the definition stipulated in Directive 2002/65/EC concerning the distance marketing of consumer financial services to guarantee a consistent use of the term "consumer" (<i>"Consumer means any natural person who is acting for purposes which are outside his trade, business or profession"</i>). It has already been implemented across industries in all Member States.</p>	
3.8.		
3.9.		
3.10.		
3.11.	<p>Complaints handling by undertakings shall contribute to resolving conflicts effectively and covering customer needs. It shall be left to the individual undertakings to decide whether or not they establish a central contact point that is in charge of complaints handling. Therefore, the term "function" shall not be used in this context. Moreover, it is not clear whether this function requires a separation of functions and if so, separation from which other functions. Local handling of complaints by specific departments may also be effective.</p>	
3.12.		
3.13.	<p>Guideline 4 stipulates that insurance undertakings shall provide information on complaints and complaints handling to the competent national authorities or ombudsman respectively. This information shall cover the number of complaints received. However, as already shown above, even the specification of the term "complaint" is difficult. Therefore, it shall be left to the undertakings to decide how they will handle requests and complaints respectively. This is a major distinguishing feature in competition. If the term "complaint" cannot be clearly specified, the obligation to report the number of complaints received does not make any sense. The significance of such statistics is therefore rather limited.</p> <p>Moreover, respective information requirements are likely to increase bureaucracy for insurance</p>	

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	<p>undertakings. No added value for national authorities can be identified, resulting from this information. The number of complaints received, in particular, does not indicate whether undertakings fail to handle complaints adequately or whether they violate any legal requirements. The number of complaints reveals nothing about the quality of a complaint (whether or not it is eligible). Moreover, supervisory authorities as well as the German insurance ombudsman are provided with sufficient information based on respective direct input from policyholders. In addition, supervisory authorities are entitled to request additional information at any time, if needed. The German insurance ombudsman, however, is not entitled to request additional information since its task is limited to the resolution of disputes. We therefore suggest deleting this provision.</p>	
3.14.		
3.15.	<p>According to Guideline 6, insurance undertakings shall provide consumers with information about their complaints handling process. There is no doubt about the fact that policyholders, and thus also consumers, shall be provided with sufficient details of how to complain. This has already been laid down in certain European provisions. For instance, Directive 2009/138/EC stipulates that insurance undertakings shall inform policyholders of the arrangements for handling complaints (second sentence of Article 183 (1) and Article 185 (3 l) of the Solvency II Framework Directive). The same applies to the Directive concerning the distance marketing of consumer financial services. The German legislator has adopted these provisions into national legislation (Article 1 No. 19 of the Regulation on Information Obligations for Insurance Contracts (VVG-InfoV)). As a result, policyholders in Germany are already informed about the arrangements for handling complaints within the scope of their contractual documents when concluding a contract. This is in the interests of the parties involved, since policyholders need a reliable, central source of information. Contractual documents are perfectly suited for this purpose. Therefore, the Guidelines should focus on contractual documents.</p> <p>It is incomprehensible why the general public should also be informed about details of the complaints handling process via the insurance undertaking's website, for instance, as stipulated in Guideline 6 (second bullet point). Internet users who do not have any contractual relationships with an insurance undertaking are usually not interested in detailed information about the complaints handling process of the insurance undertaking.</p> <p>We therefore suggest altering the provision as follows:</p>	

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	<i>Publish details of their complaints-handling process in a manner easily accessible to all consumers and the general public, for example in brochures, pamphlets, contractual documents or via the insurance undertaking's website.</i>	
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	
3.19.		
Q1. – on Impact Assessment	<p>As specified in the Consultation Paper, the proposed Guidelines are based on provisions laid down in the Solvency II Framework Directive. Article 41 et seq. of Directive 2009/138/EC, above all, set out provisions on the governance system and on the risk management of insurance undertakings, in particular. Since the implementing rules do not provide any information in this context, the national legislator is asked to implement these provisions. In this case, it shall be ensured that the national legislator can use the room for manoeuvre it is entitled to when implementing European provisions. This room for manoeuvre shall not be restricted, not even by any Guidelines by EIOPA. The fact that the proposed Guidelines are not binding reflects this idea. National authorities may comply with the Guidelines, but they are not obliged to do so. It would be extremely problematic if the Guidelines have de facto binding effect due to excessive regulations, resulting in restriction of the legislative freedom or even ambiguity with respect to individual provisions.</p> <p>Against the background of the mentioned provisions stipulated in the Solvency II Framework Directive, the impact achieved by the proposed non-binding Guidelines shall not be overestimated.</p> <p>Moreover, as already stated above, it is to be considered that detailed provisions on complaints handling will deprive insurance undertakings of a major distinguishing feature. Having in place an effective complaints management policy gives undertakings a competitive advantage over competitors and also provides huge benefits to customers. Excessive regulations, however, create additional bureaucracy as well as extra costs. Moreover, they are likely to prevent new innovative approaches.</p>	
Q2.– on Impact Assessment	Insofar as this question focusses on the risks carried by insurance undertakings, it is to be pointed out that insurance undertakings in Germany are obliged to provide the national supervisory authority, the Federal Financial Supervisory Authority (BaFin), with extensive information on these risks. Therefore, we are not able to think of any additional benefits which might be expected.	

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Q3.– on Impact Assessment	As mentioned in the Consultation Paper, additional obligations usually also imply additional costs. Therefore, any efforts should focus on a balanced relation between ends and means, which is in the interests of the parties involved. This also corresponds to the principle of proportionality stipulated in Article 29 (3) of the Solvency II Framework Directive.	
Q4.– on Impact Assessment	No reliable values can be reported in this context. It is a matter of fact that extensive efforts usually also imply high costs. Moreover, we believe that it shall be left to the insurance undertakings to decide whether or not a central body which is in charge of complaints handling shall be established.	
Best Practices Report Comments (EIOPA-CP-11/010b)		