

**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:	GEMA (Groupement des Entreprises Mutuelles d'Assurance)	
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>GEMA ("Groupement des Entreprises Mutuelles d'Assurance") is a french association of mutuals. We welcome the opportunity to provide some comments on EIOPA's consultation paper on the Proposal for Guidelines on Complaints-Handling by insurance Undertakings.</p> <p>GEMA is particularly concerned by these EOIPA Guidelines for two reasons :</p> <ul style="list-style-type: none"> - because mutuals focus on complaints-handling for years. They care for their customers and pay attention to provide them with the best services. This is the reason why mutuals have developed a process for complaints-handling. At a first level, complaints are handled in each company by following an internal process. Then, complaints may be addressed, at a second level, to a complaints-handling within GEMA. - because, the french supervisor adopted in December 2011 recommendations on this subject. <p>In this regard, GEMA wants to point out that there might be an issue regarding the legal value of these EIOPA guidelines. Because, even if these EIOPA guidelines largely correspond to the french supervisor recommendations, there may be some points of divergence. Therefore, it is important that the EIOPA specify if these guidelines are intended to be mandatory for Member States. If yes, it must be ensured that these guidelines will be harmonized in every Member States and will not create legal uncertainty for insurance undertakings. In France, insurers are required to be in accordance with their supervisor's recommendations by the 1st September 2012. They quickly need to know if the french supervisor's recommendations are likely to be modified with regard of the EIOPA guidelines.</p> <p>GEMA want to stress two missing points in this report :</p> <ul style="list-style-type: none"> - We believe EIOPA did not enough take into account that insurance is often subscribed on the internet (or broadly speaking, distance selling). This calls for a particular complaints-handling process. 	

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- We assume intermediaries should also be involved in the complaints-handling process. It is not so easy to distinguish whether the complaint should be handled by the insurer himself or by the intermediary, and it happens that they each refuse to take this responsibility.

GEMA would also like to emphasise two issues regarding the definition given by EIOPA for "complaint" or "claim":

First, GEMA notes that the wordings employed by EIOPA are slightly different from those employed by the french supervisor and wonder if this difference between national and european guidelines could be a problem.

GEMA wants also to dispute the definitions given by EIOPA. The EIOPA project explains that a "complaint" means any "expression of dissatisfaction". This concept is too broad and inappropriate to the usual context of relations between the insured and the insurers. Some expressions of dissatisfaction may only be a request for information or clarification or a claim for compensation. And the best way to arbitrate between a complaint and a request for information is to discuss with the insured. Therefore it seems excessive to expect that all manifestation of discontent, as it is a highly subjective concept, should follow these guidelines.

Moreover, GEMA observes that the scope of the guidelines proposed by the EIOPA is limited to insurance undertakings. In comparison, the recommendations of the french supervisor are relevant for insurance undertakings (whatever the type of the organization : insurance companies, mutuals, provident institutions and intermediaries) and credit institutions. In order to create a level playing field, GEMA suggest to raise the EIOPA guidelines at EIOPA-EBA (European Banking Authority) level, so as to include all financial and credit institutions.

3.1.

3.2.

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3.3.	<p>See general comment.</p> <p>EIOPA must precise the legal value of these guidelines on complaints-handling. EIOPA has to clarify whether these guidelines are intended to be mandatory or not and if yes, to whom (insurance undertakings or national supervisors).</p> <p>French insurers may be in an uncertain situation, if national guidelines (from the french supervisor) and European guidelines (from EIOPA) are not in harmony. The situation must be clarified as soon as possible and long before the 1st September 2012.</p>	
3.4.		
3.5.		
3.6.	<p>GEMA believes that it is dangerous to allow "national legal or regulatory requirements to go into further details than these Guidelines" since it does not fulfil the objective of harmonization.</p>	
3.7.	<p>See general comment.</p> <p>GEMA considers that the definition given by EIOPA of "complaints" is too broad and inappropriate.</p> <p>In the insurance field, the contractual relationships often lead to dialogue between the insurer and the insured at the time of subscription and at the time of claims handling. By giving a too broad definition of the terms "claim" or "complaint" such as "any expression of dissatisfaction", EIOPA makes the apprehension of this concept and its implementation more difficult. This is why we suggest to narrow the scope of "complaints" by excluding both a claim on the execution of the contrat and a request for information or clarification.</p>	

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	<p>This could lead to the following definition : a complaint is an objection made by the insured after a first request related to the execution of the insurance contract.</p>	
<p>3.8.</p>	<p>GEMA does not agree with the second part of the paragraph, where insurance undertakings are asked to explain to the customer the position of another financial institution. This goes too far, and insurance undertakings should at the most be asked to redirect the customer.</p> <p>A sufficient measure could be that insurance undertakings should provide the form of the communication of the claims addressed by error to a non-competent person.</p>	
<p>3.9.</p>		
<p>3.10.</p>	<p>First, we would like EIOPA to precise what is a "complaint management policy". In our view, the aim of this document is to give advice on the organization of the complaints-handling and describe the internal process of the insurance undertaking.</p> <p>We do not believe that the "complaints management policy" should be defined and endorsed by the insurance undertaking's senior management. We think that insurance company should be free to set the best organization regarding complaints-handling. For instance, it may be relevant :</p> <ul style="list-style-type: none"> - (i) to identify the person in charge of complaints-handling, - (ii) to give him the authorization to bind the company, - (iii) and to let him report to the senior management the strategy used to avoid some dysfunctions. <p>The organization of complaints-handling must remain the responsibility of each company.</p> <p>Moreover, we do not want to communicate on the "complaints management policy" to all consumers</p>	

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	because this document is not written in this purpose. On the other hand, we agree that this document should be largely given to the employees, because the insured or the beneficiary has the right to know, when appropriate, that a dedicated department exists. Information on the complaints management policy must be easily available for the consumers.	
3.11.	<p>The EIOPA's provision on the "complaint management function" is too stringent.</p> <p>It should not be requested to set a new function in the company but only to provide that a frustrated customer may apply to a dedicated service different from his customer advisor or his manager when allowed by the size and the structure of the entity.</p> <p>This EIOPA's proposal could lead to renew the internal organization of each insurance company. We would prefer this proposal to be tempered with a proportionality principle.</p>	
3.12.	We consider that the way insurance undertakings report should remain a senior management choice. EIOPA should only precise that complaints must be registered at a central place and that these registrations may be used to supply internal or/and external reporting.	
3.13.		
3.14.		
3.15.	<p>Bullet 3 (i).</p> <p>We doubt that it is relevant to communicate to the complainant "the identity and contact details of the person or department to whom the complaint should be directed". Indeed, we feel it is risky to stick at one employee on one particular file. In order to improve the delay needed for complaints-handling, any member of staff available should be able to handle any file.</p>	

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	This is especially truth in case of natural disaster or other big catastrophe. In this situation, one person is not enough because she will be overwhelmed. There must be several people, otherwise the process could be unefficient.	
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		
Q2.– on Impact Assessment		
Q3.– on Impact Assessment		
Q4.– on Impact Assessment		
Best Practices Report Comments (EIOPA-CP-11/010b)		