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| Comments Template on EIOPA-CP 13/006a and EIOPA-CP 13/006b Consultation Paper on the Proposal for Guidelines on Complaints-Handling by Insurance Intermediaries and Draft Report on Best Practices by Insurance Intermediaries in handling complaints | | Deadline 28 June 2013 12:00 CET |
| Company name: | Fédération Française des Sociétés d'Assurance (FFSA), 26 Bd Haussmann 75311, Paris cedex 09 | |
| Disclosure of comments: | EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. | Public |
| <p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ 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. <ul style="list-style-type: none"> ○ 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. <p>Please send the completed template to CP-13-006@eiopa.europa.eu, in MS Word Format, (our IT tool does not allow processing of any other formats).</p> <p>The paragraph numbers and questions below correspond to document no. EIOPA-CP-13/006a. There is an additional section at the end of the table for general comments on the draft Best Practices Report (document no. EIOPA-CP-13/006b).</p> | | |

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| General Comment | <p>The FFSA is concerned with the content of these guidelines which is a simple copy-paste of the guidelines on complaints handling by insurance undertakings (Eiopa-CP-11/010a), while the situation of the people involved is totally different. Although EIOPA states, in its Impact Assessment, that these guidelines have been developed to take into account the specificities of each type of insurance market participant, the FFSA is not convinced it actually allows adjustments considering provisions are the same.</p> <p>Moreover, where there is a change in the wording, it is not enough, in our view, to consider that these requirements are appropriate for insurance intermediaries. For example, the guideline 5 on reporting set out that intermediaries should be "in a position" to provide information. The FFSA wonders what is the actual difference between the obligation of being "in a position to provide information" and the obligation to provide information. Contrary to EIOPA's assertions, this apparent loosening of the requirement only benefits to NCAs (competent national supervisory authorities) who will avoid handling massive reporting flows. From the intermediary point of view, it's exactly the same burden, particularly since the Impact Assessment provided by EIOPA makes clear that supervision of compliance with this guideline should be carried out by on-site inspections or specific requests.</p> <p>Above all, most provisions of these guidelines are not suitable for insurance intermediaries as the corresponding requirements do not make sense or are too burdensome for natural persons acting on their own behalf and small legal structures that represent the overwhelming majority of the players in the EU. These intermediaries have neither the time, the organization nor the financial resources to comply with such requirements.</p> <p>As EIOPA acknowledges, intermediaries will have to support additional costs in order to comply with these guidelines and small insurance intermediaries will be particularly affected by these provisions. The FFSA would like to remind the EIOPA that Europe is going through its worst economic crisis since decades with an unemployment rate that keeps on growing. As most intermediaries on the market are natural persons, it could be judicious not to aggravate their situation so that they do not have to stop their activity because of burdensome and costly requirements.</p> |

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Besides, the impact assessment provided in EIOPA’s proposal does not give any material evidence that the benefits will actually outweigh these costs. According to EIOPA, the benefits arising of this text will be the following: improvement of consumer confidence, prevention of reputational risk and fair treatment of complaints.

Regarding the improvement of consumer confidence, the EIOPA believes that this benefit is only “expected”. Meanwhile, the costs for the intermediary are certain and undeniable. The FFSA considers that consumer confidence must be enhanced principally before the conclusion of the contract : if the the consumer purchases the insurance contract which complies with its needs, there is no reason a complaint arise from it.

Regarding the reputation, this risk mainly affect renowned intermediaries of a certain size. These intermediaries, because of the strong competition on the market, already handle complaints with the seriousness and speed required. Thus, the guidelines will impact small structures and natural persons with disproportionate requirements.

Regarding the fair treatment of complaints, EIOPA must keep in mind that the clients of an intermediary represent his income (trough fees and commissions) but they also represent his business. In a competitive context, an intermediary has to act in the best interest of his clients to prevent them from using a competitor. Intermediaries aims at developing a continuous relation with his clients. Thus, it’s not the interest of an intermediary to handle complaints inconsideratly and carelessly. Therefore, even if complaints handling could be framed, the requirements corresponding has to be softened in order to reduce costs and time for intermediaries who don’t have the human and financial resources to comply.

Finally, in the same way, the FFSA regrets that no reference is made to proportionality in the text of the guidelines itself (the only reference to proportionality is made in the introduction-see point 7) . The FFSA believes this precision is essential for a proper application of these requirements due to differences in terms of size and resources between insurance companies and intermediaries but also

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|--|--|--|
| | <p>between intermediaries.</p> <p>As a consequence, it should be highlighted and introduced in the text of the guidelines itself, where relevant. Furthermore, we note that the only criteria taken into account for a proportionate application of these guidelines are the nature and size of the insurance intermediary. In our view, it is also appropriate to distinguish whether the intermediation activity is carried out on an ancillary basis or principally.</p> | |
| 1. | | |
| 2. | | |
| 3. | The FFSA believes an adjustment period of one year would be reasonable given the importance in terms of organization and administrative costs caused by these guidelines. | |
| 4. | | |
| 5. | The FFSA understands that host country authorities will have to supervise complaints-handling procedure set up by insurance intermediaries acting in their country via freedom of services or freedom of establishment. The FFSA wonders whether this rule complies with home State principle. | |
| 6. | | |
| 7. | <p>We regret that no reference is made to proportionality in the text of the guidelines itself. This principle should be highlighted and introduced in the text, where relevant. Furthermore, a reference should be made to the nature of activity (ancillary or not) The FFSA suggests this wording :</p> <p><i>"For the implementation of this guideline, competent authorities should take into account the nature and size of the insurance intermediary concerned as well as if he exercises the activity of intermediation mainly or as ancillary"</i></p> | |

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|--|--|--|
| 8. | The EIOPA Regulation ¹ justifies the power to issue guidelines by the objective of ensuring a common, uniform and consistent application of Union law . In this context, it seems essential to define a common definition of the word "complaint". Indeed, the lack of harmonization on such an important point is contrary to the objectives set out in the EIOPA regulation. Therefore, the FFSA would like the definition provided in EIOPA's proposal to be mandatory. | |
| 9. | <p>Definitions should not be "indicative" but mandatory at national level. Indeed, the Eu regulation, 1094/2010 of 24/11/2010 establishing EIOPA states : <i>„The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial institutions.“</i></p> <p>Regarding the indicative definition of "complaint", EIOPA refers to "mediation activities of the intermediary". The FFSA would like to stress that some activities which are in the scope of intermediation activities of IMD have to be considered as activities which could be "outsourced" by the insurance company (see art.49 Directive Solvency II). In these conditions, regarding complaints-handling system, if the complaint relates to an activity which is outsourced (as defined in Solvency II), like claims-handling or underwriting², to the intermediary, who will be responsible for the complaints-handling procedure ? The insurance company or the intermediary ?</p> | |
| 10. | | |
| 11. | On this point, the FFSA wonders about the legal basis for this requirement as it deals with complaints about activities "other than those regulated by the competent authorities". The FFSA fears that this obligation to explain its position on the complaint create a new risk for the insurance intermediary to see his responsibility involved. This risk is not legally justified in our view. Same remarks for point 1 of report on Best practices : "when an insurance intermediary receives a complaint about non-insurance activities, it would be best practice to respond, where, possible explaining the insurance | |

¹ See art.16, Regulation n° 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (EIOPA)

² See EIOPA's proposal for Guidelines on the System of Governance, 27/03/2013, n°48 and 49.

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|--|--|--|
| | intermediary's position on the complaint" . | |
| 12. | The FFSA understands the interest of a reference to the "Report on Best Practices by Insurance Intermediaries in handling complaints". Nevertheless, in order to avoid any confusion on the mandatory nature of this text, it should be recall that these best practices are not legally binding. | |
| 13. | <p>The FFSA is not entirely satisfied with this guideline as it doesn't solve the main difficulty of the relations between insurance intermediaries and undertakings : in which case the intermediary deals with complaints on behalf of the company ?</p> <p>For the rest, the FFSA agrees partly with this provision. We support that intermediaries should adopt this conduct if they know the insurance entity concerned. However, when they don't, the FFSA doesn't see how they could direct the complaint to the relevant entity. In this situation, we consider the intermediary should only inform the complainant on the fact he is not responsible and he is not able to direct the complaint to the right insurance entity.</p> | |
| 14. | The FFSA welcomes this paragraph. | |
| 15. | <p>The FFSA considers that this guideline only makes sense for large intermediaries. Indeed, this provision is not suitable for insurance intermediaries as the corresponding requirements have no meaning for natural persons acting on their own behalf and/or small legal structures. In this respect, the vocabulary used is the best proof : the FFSA calls into question the existence of senior management for the overwhelming majority of insurance intermediaries on the market (e.g natural persons and small structures). Thus, this requirement should be limited to intermediaries of a certain size. The FFSA would like an additionnal d) in this paragraph to provide this limit.</p> <p>Instead of having to establish a complaint management policy, the FFSA suggests that small intermediaries adopt and make available, in a written document, their complaints-handling process. This would be consistent with Guideline 7 a) and proportionate.</p> <p>At least, an explicit reference to propotionality should be added : <i>"For the implementation of this guideline, competent authorities should take into account the nature and size of the insurance</i></p> | |

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|--|---|--|
| | <i>intermediary concerned as well as if he exercises the activity of intermediation mainly or as ancillary”.</i> | |
| 16. | <p>This provision is not suitable for insurance intermediaries as the corresponding requirements have no meaning for natural persons acting on their own behalf and/or small legal structures that represent a large majority of the actors on the market in the EU.</p> <p>First, The FFSA does not understand how this guideline could be relevant for natural persons acting on their own behalf. The same person will be, on one hand, in charge of the activity of intermediation and on the other hand, responsible of investigated fairly complaints and identified/mitigated conflicts of interest. This situation seems conflicting even though the goal is to fight against conflicts of interest.</p> <p>Moreover, despite EIOPA’s statement that EIOPA does not intend to impose a heavy burden on intermediaries’ freedom of operation, this requirement proves exactly the opposite. Indeed, the EIOPA acknowledges that this will entail on-going costs, which will be significant for smaller businesses who will be particularly affected by the implementation of this function. Therefore, the FFSA is concerned about the the activity of many intermediaries. We believe the EIOPA should adopt a more consistent approach by adopting softened requirements in order to reduce costs for intermediaries who don’t have the human and financial resources to comply with Guidelines.</p> | |
| 17. | <p>This provision is not suitable for insurance intermediaries as the corresponding requirements have no meaning for natural persons acting on their own behalf and/or small legal structures that represent a large majority of the players on the market in the EU.</p> <p>The FFSA considers that this guideline (and the following on reporting) is 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 intermediaries while the result (the total number of complaints) will not be significant. When complaints occur, this occurrence does</p> | |

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|--|---|--|
| | <p>not necessarily means that the business is unsound or in violation of any legal provision.</p> <p>An explicit reference to proportionality should be added : <i>"For the implementation of this guideline, competent authorities should take into account the nature and size of the insurance intermediary concerned as well as if he exercises the activity of intermediation mainly or as ancillary"</i>.</p> | |
| 18. | <p>See 17. Above</p> <p>We would like to stress again that these reporting requirements will be financially unsustainable for intermediaries, particularly since the Impact Assessment provided by EIOPA make clear that supervision of compliance with this guideline should be carried out by on-site inspections or specific requests. This involves constantly updating information in order to be in a position to provide information as required.</p> | |
| 19. | <p>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.</p> <p>After reading this guideline, the FFSA considers that it is necessary to establish an entire department specifically dedicated to processing claims to efficiently comply with it. Thus, these requirements are not suitable for insurance intermediaries because a large majority of the actors on the market are not in position to conduct a thorough and ongoing study of the root causes common to types of complaints.</p> <p>Moreover, the FFSA regrets that this guideline uses the wording of the provisions on governance of the Solvency II directive (e.g systemic problems) as insurance intermediaries are excluded from its scope.</p> <p>As a consequence, the FFSA would like another wording and make the following proposition.</p> <p><i>19. Competent authorities should ensure that insurance intermediaries :</i></p> | |

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|--|---|--|
| | <p>a) Regularly deal with any recurring problems, including potential legal risks ;</p> <p>b) If appropriate, use complaints-handling data to identify these recurring problems ;</p> <p>c) where relevant, analyse the causes of individual complaints so as to identify root causes common to types of complaints in order to correct such root causes, where reasonable to do so ;</p> <p>20. For the implementation of this guideline, competent authorities should take into account the nature and size of the insurance intermediary concerned as well as if he exercises the activity of intermediation mainly or as ancillary.</p> | |
| 20. | <p>The FFSA supports point a) of this guideline as we believe that the complainant deserves clear, accurate and up-to-date information on both the complaint handling process and further handling of the complaint.</p> <p>However, we consider that the requirement of publication of the complaint handling process (point b) is not suitable for insurance intermediaries. First, it overlaps with the provision of information on request or when acknowledging receipt of a complaint. Secondly, this requirement has a certain cost for small intermediaries, particularly considering the examples given by the EIOPA : not every intermediary has the resources to print, in many copies, brochures or to own an adequate websites.</p> <p>At least, the FFSA asks for the deletion of these provisions in order to let the intermediary free to choose the most adequate manner to make available the complaint-handling process.</p> <p>An explicit reference to proportionality should be added : <i>“For the implementation of this guideline, competent authorities should take into account the nature and size of the insurance intermediary concerned as well as if he exercises the activity of intermediation mainly or as ancillary”.</i></p> | |
| 21. | <p>The FFSA can support this guideline with the exception of a). This requirement is not suitable for insurance intermediaries whose majority do not have the time nor the financial resources to comply with it. Moreover, we can't see why it should be the intermediary 's role to seek to gather and investigate all relevant evidence and information regarding the complaint.</p> | |
| 22. | | |

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| 23. | | |
| 24. | | |
| 25. | | |
| 26. | | |
| Q1. - on Impact Assessment | <p>For the FFSA, the “application” of guidelines on complaints-handling by insurance intermediaries will lead to significant costs for these intermediaries. All of them are not able to support these costs. For instance, the creation of a complaints management function (guideline 3) is not feasible for small structures which constitute the overwhelming majority of registered intermediaries. Furthermore, the adoption of a complaints-handling function will be time-consuming and lead to a reorganisation of the structure.</p> <p>The FFSA regrets that no reference is made to proportionality in the text of the guidelines itself (the only reference to proportionality is made in the introduction-see point 7) . The FFSA believes this precision is essential for a proper application of these requirements due to differences in terms of size and resources between insurance companies and intermediaries but also between intermediaries.</p> | |
| Q2a. - on Impact Assessment | | |
| Q2b. - on Impact Assessment | | |
| Q2c. - on Impact Assessment | | |
| Q2d. - on Impact Assessment | | |
| Q3. - on Impact Assessment | | |
| Best Practices Report Comments | | |

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| | Comments Template on EIOPA-CP 13/006a and EIOPA-CP 13/006b Consultation Paper on the Proposal for Guidelines on Complaints-Handling by Insurance Intermediaries and Draft Report on Best Practices by Insurance Intermediaries in handling complaints | Deadline 28 June 2013 12:00 CET |
| (EIOPA-CP-13/006b) | | |