

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:	German Insurance Association (GDV), Wilhelmstr. 43G, 10117 Berlin (ID Number 6437280268-55)	
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
<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 <u>no comment</u> on a paragraph, keep the row <u>empty</u>. 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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Reference	Comment	
General Comment	<p>The German insurance industry</p> <ul style="list-style-type: none"> • believes that procedures which enable consumers to lodge complaints about insurance intermediaries are basically an indispensable component of effective consumer protection; • supports the approach to set up procedures which allow customers and other interested parties to register complaints about insurance intermediaries (Article 10 IMD1) as stipulated in Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (IMD1); • welcomes the efforts of the European Commission and the European Parliament to also provide for complaints-handling procedures regarding insurance intermediaries (Article 12 IMD2) in the recast of the previously mentioned Directive (IMD2); • however, believes that Guidelines on complaints-handling by insurance intermediaries are not required. <p>Justification:</p> <p>I. External complaints-handling procedures meet the requirements of IMD1</p> <p>Article 10 IMD1 gives Member States the flexibility to implement internal or external complaints-handling procedures. Member States which have implemented external complaints-handling procedures meet the requirements of IMD1. It cannot be deduced from Article 10 IMD1 that insurance intermediaries are obliged to set up internal complaints-handling procedures. Such an interpretation would go too far. Against this background, it is not appropriate to call for a</p>	

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complaints management policy for internal complaints-handling procedures as described in the Draft Guidelines.

With respect to the principle of proportionality it is important for small insurance intermediaries (which only consist of one person in many cases), in particular, to have the option to redirect complaints to external complaints bodies (insurance undertaking or ombudsman).

Member States shall be allowed to maintain the complaints-handling procedures they have already established and to decide what kind of complaints-handling procedure is appropriate for their national markets.

II. The shortcomings which EIOPA believes to exist do not justify the issuance of Guidelines on internal complaints-handling procedures.

By issuing the Guidelines – to resolve the problems identified – EIOPA pursues the following objectives (see Impact Assessment Part I, No. 3):

- i. Create a level playing field for insurance intermediaries across the EU;
- ii. Ensure fair treatment of complainants by insurance intermediaries.

These objectives are based on the following assumptions

a. Consumers are not always provided with adequate mechanisms to complain about advice and selling practices of insurance intermediaries (see Impact Assessment Part I, No. 2.1);

b. Conflicts of interest based on an asymmetry of information, if not addressed, can lead to poor/inappropriate insurance sales for consumers, with associated detrimental outcomes (see Impact Assessment Part I, No. 2.1);

c. Appropriate complaints-handling can increase the likelihood that consumers, if they are not treated appropriately by an insurance intermediary, will obtain redress (see Impact Assessment Part I, No. 2.2).

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These assumptions are partially incorrect and do not justify the issuance of Guidelines to achieve the objectives mentioned above:

on a.

All consumers in Europe are provided with adequate mechanisms to complain about the advice and selling practices of insurance intermediaries based on the implementation of Article 10 IMD1. Article 10 IMD1 not only allows Member States to decide whether they implement internal or external complaints-handling procedures but also gives them flexibility in designing the procedures.

Internal complaints-handling procedures are not required for insurance intermediaries in general. They are not appropriate for tied insurance intermediaries in particular. Tied insurance intermediaries work exclusively for insurance undertakings which are already subject to the Guidelines on complaints-handling by insurance undertakings issued by EIOPA. Due to their size and existing structures, insurance undertakings are able to ensure an appropriate handling of complaints in the way required by EIOPA. Tied insurance intermediaries redirect the complaint to the insurance undertaking. Consumers are already sufficiently protected through this system.

on b.

Issuing Guidelines on complaints-handling by insurance intermediaries is not appropriate to eliminate an alleged asymmetry of information with respect to possible conflicts of interest of insurance intermediaries.

Complaints-handling procedures do not intervene until a possible misconduct on the part of an insurance intermediary has occurred. The complaints-handling procedure has a repressive nature in this respect. Taking a preventive approach, the EU Commission, in contrast, has proposed in Chapter 6 (Article 16 et seq.) of IMD2 to implement numerous new information requirements to resolve the asymmetry of information identified by EIOPA and to avert possible conflicts of interest of insurance intermediaries. The involved Committees of the European Parliament

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(ECON, IMCO, JURI) also prefer preventive information requirements and do not see any need to change the provisions on establishing complaints-handling procedures. The proposal on Article 12 IMD2 does not change the former Article 10 IMD1 which has prompted EIOPA to issue the Guidelines.

on c.

Complaints-handling by insurance intermediaries will not increase the likelihood that consumers, if they are not treated appropriately by an insurance intermediary, will obtain redress.

Only very rarely would insurance intermediaries, which are usually sole traders and thus would have to evaluate their own behaviour causing a complaint, admit any misconduct, resulting in paying compensation to a customer. Instead, an impartial and independent remedial procedure is required for this purpose, which has been established by 83% of the Member States within the scope of implementing Article 10 IMD1 [see Impact Assessment Part II, a) 1.]. Independent procedures shall also be implemented in the Member States for the purpose of settling disputes between insurance intermediaries and customers out of court in accordance with Article 13 IMD2.

In this respect, the problems identified by EIOPA do not justify the objectives pursued:

- i. The existing differences regarding the implementation of Article 10 IMD1 do not result in any obvious disadvantages to consumers. They are treated in a fair manner when lodging a complaint throughout Europe.
- ii. There is no evidence for any distortion of competition as a result of the national design of complaints-handling procedures.

III. Introducing an internal complaints-handling procedure for insurance intermediaries is inappropriate and infeasible.

Most insurance intermediaries are sole traders. They usually employ – often on a part-time basis – only one or a small number of employees who do not carry out insurance mediation activities

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in the sense of Article 2(3) IMD1 but perform administrative tasks in most cases. Establishing internal complaints-handling procedures would involve a disproportionate organisational effort for these insurance intermediaries. Furthermore, they will not be able to ensure a constant quality with respect to the procedures. It is questionable whether consumer protection can be increased by means of internal complaints-handling procedures.

Moreover, insurance intermediaries operating as sole traders would usually communicate their position on their conduct causing the complaint within the scope of complaints-handling procedures. The assumption of EIOPA that the handling of complaints about their own activities would provide a strong incentive for insurance intermediaries to treat their customers in a way that minimises the number of complaints that they receive [see Impact Assessment Part I, 4. c] is questionable. Quite the contrary is true. The fact that complaints are processed and decided by insurance undertakings or another independent, impartial ombudsman will actually provide a much stronger incentive for insurance intermediaries to avert a possible reputational damage. Moreover, introducing internal complaints-handling procedures would be more time-consuming and inefficient, and it would be difficult to ensure the quality of the procedures. Providing the response to the conduct causing a complaint to an independent body which is authorised to make a decision and not to the complainant, in particular, will enhance the awareness of the insurance intermediary of the root causes of dissatisfaction even more.

Most Member States (83%) have already established independent, external complaints bodies within the scope of implementing Article 10 IMD1. In Germany, this task is being performed by an ombudsman. Insurance intermediaries are obliged to inform customers about the possibility to lodge complaints before external entities when being contacted for the first time in accordance with Article 12(1)(e) IMD1. Many insurance undertakings have established a professional internal complaints management system and review it with regard to EIOPA's Guideline on complaints-handling by insurance undertakings. In Germany, customers also have the possibility to lodge their complaints with the Federal Financial Supervisory Authority (BaFin). This also applies if the problem is based on an alleged misconduct of an insurance intermediary provided that the insurance intermediary is an agent representing more than one company or a tied agent.

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	<p>Conclusion:</p> <p>Internal complaints-handling procedures by insurance intermediaries involve a large organisational effort, the quality of the procedures cannot be ensured and their impact on consumer protection is questionable. Insurance intermediaries should have the possibility to redirect customer complaints straight to an external complaints body (insurance undertaking or ombudsman).</p> <p>Note:</p> <p>Starting with page 5, the numbering of the Guidelines is not in line with the numbering in Annex II. In the following, reference is therefore made to the Guidelines from page 5 on.</p>	
1.		
2.	Policyholders are adequately and sufficiently protected with respect to the possibility to lodge complaints about insurance intermediaries through the implementation of Article 10 IMD1.	
3.		
4.		
5.		
6.		
7.	Giving insurance intermediaries the possibility to redirect complaints of customers straight to an external complaints body, as a general rule, is supported by the German insurance industry. In any case, insurance undertakings should have the possibility to undertake the tasks of their tied agents stipulated in the Guidelines (see also General Comment II on a.). It is probably more natural for customers to first lodge their complaint about a tied agent with the insurance undertaking anyway. In many cases, the complaint can already be settled there.	

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8.	When issuing a separate Guideline on complaints-handling by insurance intermediaries, it shall be made sure that this Guideline is in line with EIOPA's Guideline on complaints-handling by insurance undertakings.	
9.		
10.		
11.		
12.	It should be clarified that the procedures described in the Best Practices Report are not binding and that they are not subject to the "comply or explain" principle (see Introduction of the Best Practices Report in this context).	
13.		
14.		
15.	The provisions concerning a complaints management policy mentioned in a) to c) indicate the bureaucratic effort to be taken by insurance intermediaries when establishing a complaints management system. This effort cannot be outweighed by the objectives that might be achieved for the benefit of consumers. This also applies to the complaints management processes, in particular, which are listed under i) to vii) in the Best Practices Report. With respect to the endorsement of the complaints management policy [a)] at least, EIOPA has recognised that sole traders do not have the same formal governance processes as larger insurance intermediaries and therefore, a formal endorsement process may not be necessary. Due to the fact that the procedures described in the Best Practices Report are not legally binding and that they are not subject to the "comply or explain" principle (see Introduction of the Best Practices Report in this context), clarification is required within the scope of the Guidelines.	
16.	The implementation of a designated complaints management function would involve a disproportionate effort and its quality cannot be ensured given the large number of one-person intermediaries. EIOPA has recognised this fact in the Best Practices Report. Due to the fact that the procedures described in the Best Practices Report are not legally binding and that they are not subject to the "comply or explain" principle (see Introduction of the Best Practices Report in this context), clarification is required within the scope of the Guidelines. Moreover, responding to	

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	complaints about small insurance intermediaries is heading for conflicts of interest, which shall be prevented according to the Guideline. This requirement can therefore not be met by small insurance intermediaries and may result in serious doubts about the credibility of such a complaints-handling procedure. As a result, the opposite of what should be achieved would be achieved. This will be averted by an external complaints-handling procedure.	
17.	Internal registration of complaints in an appropriate manner shall take sufficient account of the principle of proportionality, in particular. Complaints-handling procedures do not necessarily have to be archived in an internal electronic register but they can also be archived in an appropriate manner in another way.	
18.	The need to ensure that insurance intermediaries <u>are in a position</u> to provide information on complaints and complaints-handling to the competent national authorities or ombudsman has already been sufficiently addressed by Guideline 4 on Registration. Guideline 5 on Reporting can therefore be omitted.	
19.	Formal measures on the internal follow-up of complaints-handling are usually not required by insurance intermediaries given their size. Exercising due commercial care requires anyway to make sure that shortcomings which have resulted in justified complaints are being eliminated.	
20.	The measures on the provision of information indicate the bureaucratic effort to be taken by insurance intermediaries. This effort, however, can easily be reduced significantly by redirecting the issue to the competent external complaints body in accordance with Article 10 IMD1.	
21.	The procedures for responding to complaints stipulated in Guideline 8 are dispensable. Within the scope of an external, independent complaints-handling procedure, for instance by an insurance undertaking or an ombudsman, insurance intermediaries will usually communicate their position on the issue to the independent body which will take account of all relevant means of evidence and information with respect to the complaint.	

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22.		
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25.		
26.		
Q1. - on Impact Assessment	The German insurance industry believes that providing customers with the possibility to complain about insurance intermediaries is reasonable and necessary. Moreover, complaints give companies the chance to identify sources of errors and develop measures to enhance customer satisfaction on this basis. The existing legal framework, however, is sufficient for this purpose. Advantages or positive impacts resulting from the introduction of these Guidelines cannot be recognised.	
Q2a. - on Impact Assessment	A reliable assessment is not possible.	
Q2b. - on Impact Assessment	A reliable assessment is not possible.	
Q2c. - on Impact Assessment	A reliable assessment is not possible.	
Q2d. - on Impact Assessment	A reliable assessment is not possible.	
Q3. - on Impact Assessment		
Best Practices Report Comments (EIOPA-CP-13/006b)	According to the Introduction of the Best Practices Report, when applying the Guidelines, best efforts should be made to take into account the nature and size of insurance intermediaries in light of the principle of proportionality. This requirement shall be emphasized more strongly within the scope of Guideline 7. At least at this point, insurance intermediaries which employ less than two persons to carry out insurance mediation activities, for instance, shall be given the possibility to simply redirect complaints straight to the competent complaints-handling body.	

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