



EIOPA-BoS-12/072

14 June 2012

Public Consultation on the Guidelines and Best Practices Report on Complaints-Handling by Insurance Undertakings

Summary of the responses received

1. Introduction

On 9 November 2011, EIOPA published a Consultation Paper on a proposal for Guidelines and a Best Practices Report on Complaints-Handling by Insurance Undertakings. EIOPA invited comments from interested parties by 31 January 2012. This document is a summary of the contributions received. EIOPA would like to thank its Insurance and Reinsurance Stakeholder Group (IRSG) and all participants to the public consultation for their comments on the draft Guidelines and Best Practices Report.

2. Consultation Paper

The aim of the Consultation Paper was to invite interested parties to comment on the proposed Guidelines and Best Practices Report on complaints-handling by insurance undertakings. The responses received have provided important guidance to EIOPA in preparing a final version of the Guidelines and the Best Practices Report.

Using a template, respondents were invited to provide comments paragraph-by-paragraph on the Guidelines, general comments on the Best Practices Report and illustrate the nature and size of any costs and benefits related to the proposals under the Impact Assessment.

3. Responses to the Consultation

3.1 General comments

Overall comments were supportive of the Guidelines and Best Practices Report. However, a number of responses received raised important policy issues regarding, for example, the scope and legal status of the Guidelines and technical drafting points regarding, for example, the definitions used. These comments are summarised in more detail below. In addition, all of the comments made were given careful consideration by EIOPA in the attached document, which provides for EIOPA's Resolutions on the comments received [*EIOPA-CCPFI-11-010 Summary of Comments on Consultation Papers EIOPA-CP-11/10a and 10b*].

3.2 Statistics

EIOPA received a formal opinion from EIOPA's Insurance and Reinsurance Stakeholder Group (IRSG) pursuant to Article 37(6)¹ of its empowering Regulation² and 25 responses to the public consultation, for publication³.

Respondents can be classified into four main categories: *Industry Representatives, Public Bodies, Professional Associations and End Users*. Below is a summary of the responses received per type and per origin:

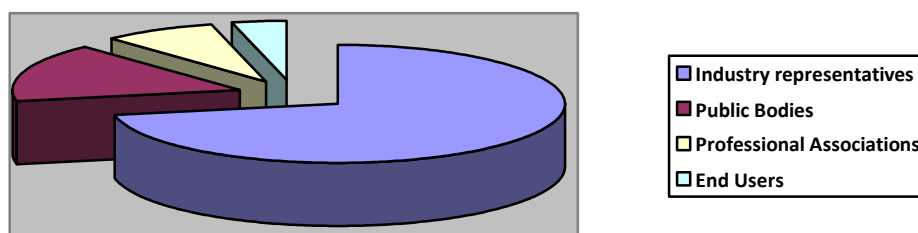
¹ "The Stakeholder Groups may submit opinions and advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16, and Articles 29, 30 and 32".

² REGULATION (EU) No 1094/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC

³ These responses and the IRSG opinion have been published on EIOPA's website:
<https://eiopa.europa.eu/consultations/consultation-papers/2011-closed-consultations/november-2011/guidelines-on-complaints-handling-by-insurance-undertakings/index.html>

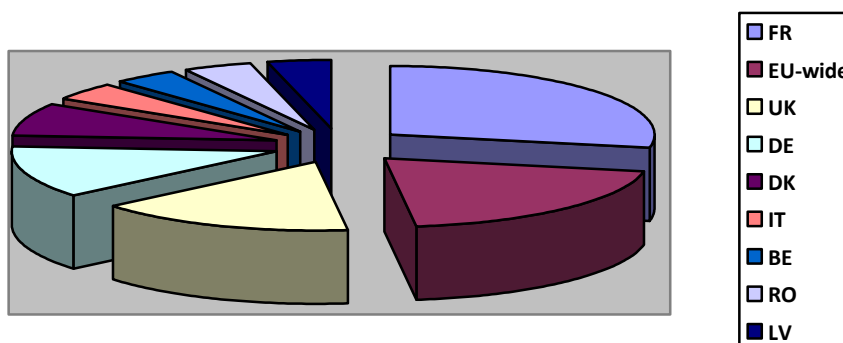
Respondents to public consultation per type

Contributions were received from 18 Industry representatives (72%), 4 public bodies (16%), 2 professional associations (8%) and 1 End User (4%).



Respondents to the public consultation per origin

Contributions were received from interested parties in 7 EU Member States (FR: 28%, UK: 16%, DE: 12%, DK: 8%, IT: 4%, BE: 4%, LV: 1% and RO: 1%) and, in 5 instances, from organisations on an EU-wide basis (20%).



3.3 IRSG opinion

In its formal opinion, the IRSG provided helpful general and specific observations on the Guidelines and Best Practices Report. Its general observations recognised the importance that effective complaints-handling plays in enhancing consumer protection and stressed the need for both involvement at a senior level in insurance undertakings with regards to complaints-handling and ease of access for consumers in making complaints. Concerns were raised about the legal status of the Guidelines and their interaction with existing EU legislation and the need for cross-sectoral consistency. Its specific observations echoed, to a large extent, the comments that were received from the 25 respondents (see below). EIOPA has sought to address the concerns raised by the IRSG both in its revised text of the Guidelines and Resolutions on the comments received [EIOPA-CCPFI-11-010 Summary of Comments on Consultation Papers EIOPA-CP-11/10a and 10b].

3.4 Specific comments on the Guidelines, Best Practices Report and Impact Assessment

The following is a summary of the key topics raised during the public consultation and EIOPA's consideration of these issues:

- **Proportionality** – A number of comments were made around the need for a proportionality provision to be included in the Guidelines along the lines of an equivalent provision in Solvency II (Article 29(3)).

EIOPA recognises the importance of these Guidelines being applied in a manner which is proportionate to the size of the insurance undertaking as illustrated by Article 29(3) of the Solvency II Directive. As a follow-up initiative to these Guidelines, EIOPA will be working on a short FAQ on how the Guidelines would apply in practice to small insurance undertakings.

- **Scope:** A number of comments were raised regarding the scope of the Guidelines and Best Practices, namely whether it was possible for them to apply to Insurance Undertakings only, or whether they should be broader in scope, covering Insurance Intermediaries. Other views were expressed regarding the need for Guidelines to be considered as part of a wider proposal for more concrete action via the Joint Committee of the ESAs.

EIOPA considers it appropriate to issue Guidelines on complaints-handling by insurance undertakings only at this stage, due to the fact that there are already existing high-level rules applicable to insurance intermediaries under the Insurance Mediation Directive. EIOPA will look into the possibility of issuing similar Guidelines on complaints-handling by insurance intermediaries. As regards the cross-sectoral implications of these Guidelines, complaints-handling is an area which has already been targeted for consideration by the Joint Committee.

- **Legal Status:** A number of comments were raised about the legal status of the Guidelines, namely how they would apply in practice under the "comply or explain" process in Article 16 of EIOPA's Regulation and the grounds for competent authorities applying rules, which go beyond the boundaries of the Guidelines.

*EIOPA has amended the "Comply or Explain" process in the "Compliance and Reporting" section of the Guidelines. In addition, **EIOPA's internal rules as regards the criteria for competent authorities complying with all Guidelines, are being supplemented to make clear that, where national rules go into further detail, they will not be considered as non-compliant if they: (i) do not contradict the Guidelines and (ii) ensure an equivalent level of consumer protection.** EIOPA would like to stress that Guidelines are non-binding legal instruments, which do not have to be implemented in the same way as an EU Directive. In this instance, they are addressed to Competent Authorities and it is up to them to organise the process of applying them at national level to insurance undertakings.*

- **Cross Border** – Concerns were raised over how competent authorities should deal with Insurance Undertakings passporting into their jurisdiction e.g. complaints directed at the branch of an insurance undertaking registered in another Member State.

EIOPA considers that the Guidelines also apply to circumstances where the competent authority supervises complaints-handling, under EU and national law, by insurance undertakings doing business in their jurisdiction under freedom of services or freedom of establishment.

- **Solvency II:** A number of concerns were raised over the interaction of the Guidelines with the Solvency II Directive given the references to the

governance provisions in Solvency II; in particular, whether the Guidelines could be seen as constituting an additional implementing measure for Solvency II or create confusions as regards the “key functions” stipulated under Solvency II.

*EIOPA is issuing these Guidelines under Article 16 of its empowering Regulation, with a view to “ensuring the common, uniform and consistent application of Union law” and not on the basis of Solvency II, given that EIOPA may also act under its empowering Regulation in the field of insurance undertakings even where Solvency II is not directly concerned provided that action ensures effective and consistent application of Solvency II⁴. These Guidelines take inspiration from Solvency II and are considered complementary to Solvency II. **EIOPA considers the notion of a “complaints management function” to be capable of clear differentiation from the notion of a “key function” under Solvency II.***

- **Definitions:** A large number of views were expressed regarding the content of the definitions in the introductory part to the Guidelines; in particular, how they could be applied in practice and their interaction with existing definitions under EU law.

EIOPA would like to stress the fact that the definitions provided are “indicative only” and do not override equivalent national definitions. Since the definitions do not form part of the actual Guidelines, but just the introductory section, they are not subject to the “comply or explain” mechanism. Therefore, narrower or broader national definitions would not be considered non-compliant.

- **Complaints-management function:** Concerns were raised over the scope of the complaints-management function and the extent to which insurance undertakings would have discretion in implementing this function.

EIOPA considers that the “complaints-management function” can be realised, for example, by a control function or by setting up a second level for handling complaints within a firm. It provides an oversight and ensures that the process is followed and complaints are handled appropriately and fairly. The insurance undertaking can decide where and how to implement this function, thus there is no need to determine within which function it should be constituted.

- **Registration and Reporting:** Concerns were raised over the demarcation between registration and reporting provisions in the Guidelines

EIOPA has amended the Guidelines to make a clearer demarcation between registration and reporting and to clarify that registration is an internal process for the insurance undertaking.

- **Procedure for responding to complaints, including ADR schemes:** the argument was raised whether it was necessary for insurance undertakings to provide information about redress procedures where an

⁴ Article 1(3), EIOPA Regulation: *The Authority shall also act in the field of activities of insurance undertakings, reinsurance undertakings, financial conglomerates, institutions for occupational retirement provision and insurance intermediaries, in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts.*

Insurance Undertaking provides, in its view, a satisfactory response to the complaint.

EIOPA considers that when providing a final decision that does not fully satisfy the complainant's demand (or any final decision, where national rules require it), insurance undertakings should include a thorough explanation of the insurance undertaking's position on the complaint and set out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, alternative dispute mechanism, national competent authorities, etc. Such decision should be provided in writing where national rules require it.

- **Provision of Information:** concerns were raised over the level of granularity of information to be provided, namely the requirement to indicate a specific individual in charge of complaints-handling and the interaction of the Guidelines with rules applicable to ADR schemes

EIOPA does not envisage that there should be one particular employee responsible to whom complaints should be directed. As regards the interaction of the Guidelines with rules applicable to ADR schemes, the Guidelines primarily concern how Insurance Undertakings should internally handle complaints.

- **Timing of implementation:** the argument was raised that there should be a transition period to allow insurance undertakings time to adapt to the Guidelines.

EIOPA does not consider a transition period necessary because:

(i) The Guidelines are non-binding;

(ii) The majority of Member States already have in place national laws, which are consistent with the content of the Guidelines.

(iii) The Guidelines are addressed to Competent Authorities; it is up to them to organise the process of applying them at national level to insurance undertakings; and

(iv) The Guidelines have a built-in transitional period in that Competent Authorities have two months from the issuance of the Guidelines within which to prepare themselves regarding compliance⁵.

3.5 Comments on the Best Practices Report and Impact Assessment

Based on comments received, some minor amendments were made to the Best Practices Report with regard to:

- (i) the "organisation of the internal complaints management function" where an additional provision providing for control, where possible, over the effective and efficient treatment of complaints;
- (ii) "information" (rather than "data") to be provided to complainants on request, regarding their complaint

⁵ Article 16(2) sub paragraph 2, EIOPA Regulation provides: *Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.*

Based on comments received and subsequent amendments to the Guidelines, a revised Impact Assessment has been published [see Annex to Guidelines].