



EIOPA-IRSG-12-01

27 January 2012

**OPINION of the EIOPA Insurance and  
Reinsurance Stakeholder Group  
regarding EIOPA Consultation -  
Guidelines on Complaints-Handling by  
Insurance Undertakings**

(EIOPA- CP-11/010a, 9 November 2011)

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## Introduction and legal basis:

In November 2011, EIOPA initiated the public consultation on the guidelines on Complaints-Handling by Insurance Undertakings.

These Guidelines have been produced based on provisions of Article 16 of the EIOPA Regulation and taking into account Recital 16 and Articles 41, 46, 183 and 185 of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (“Solvency II Directive”), which provide for the following:

- “The main objective of insurance and reinsurance regulation and supervision is the **adequate protection of policyholders and beneficiaries.....**”<sup>1</sup>.
- “Member States shall require all insurance and reinsurance undertakings to have in place **an effective system of governance** which provides for **sound and prudent management of the business**”<sup>2</sup>.
- “Insurance and reinsurance undertakings shall have in place **an effective internal control system**. That system shall **at least** include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a compliance function”<sup>3</sup>.
- In the case of *non-life insurance*, a duty for the insurance undertaking to “**inform the policyholder of the arrangements for handling complaints of policyholders concerning contracts including, where appropriate, the existence of a complaints body**, without prejudice to the right of the policy holder to take legal proceedings”<sup>4</sup>.
- In the case of *life insurance*, the duty for the insurance undertaking to communicate to the policyholder, in relation to the commitment, “**the arrangements for handling complaints concerning contracts by policyholders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body**, without prejudice to the right to take legal proceedings”<sup>5</sup>.

The Draft Guidelines on Complaints-Handling by Insurance Undertakings aim to:

1. Clarify the expectations relating to an insurance undertaking’s internal control system as regards complaints-handling and possible follow-up and render it more effective;
2. give guidance on the provision of information to consumers; and
3. give guidance on procedures for responding to complaints, thereby ensuring the adequate protection of policyholders and beneficiaries.

Under the Regulation establishing EIOPA (1094/2010/EC), the Authority has the power to issue guidelines and recommendations. The guidelines are non-binding tools which should ensure the

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<sup>1</sup> Recital 16

<sup>2</sup> Article 41(1) first para .

<sup>3</sup> Article 46(1)

<sup>4</sup> Article 183(1) second para.

<sup>5</sup> Article 185(3)(l)

consistent, efficient and effective supervisory practices within the European System of Financial Supervisors as well as the common, uniform and consistent application of Union Law.

The EIOPA Insurance and Reinsurance Stakeholder Group competence to deliver an opinion towards EIOPA consultations on draft guidelines is based on Article 37 of EIOPA Regulation.

### **General observations regarding EIOPA consultation on guidelines on Complaints-Handling by Insurance Undertakings:**

- We welcome the opportunity to comment and consider a European standard on complaint management supportive to protect the trust in the insurance industry.
- Effective complaints handling is critical for consumers and should be regarded as a high priority at a senior level within companies, with ultimate ownership for the process at board level.
- It is critical that firms make it easy for customers to complain. Therefore the definition of complaints must be clear but must not impede customers unfairly from raising their complaints and concerns.
- Transparency plays an important role for competent authority and market participants.
- A clarity from EIOPA around Comply or Explain would be helpful , as well as a clarity what its expectations are in more detail around competent authorities and firms. This includes a clarification over the legal status of the proposed guidelines.
- We would suggest to bring the following statements to the attention of the Joint Committee:
  - It is important to also take into account and at least refer to the two new proposals from the Commission on a Directive on ADRs and a Regulation on ODR (on line disputes) to be adopted in 2012.
  - An alignment seems necessary, so as to avoid double/ contradicting regulation with existing or planned regulation (IMD/ PRIPS).
  - It must be also ensured that other financial service providers (e.g. banks). have similar standards. Therefore we would suggest that the topic be brought forward to the joint committee.

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**Specific observations regarding EIOPA draft guidelines on guidelines on  
Complaints-Handling by Insurance Undertakings:**

Detailed comments regarding EIOPA draft guidelines on Complaints-Handling by Insurance Undertakings are provided in the annex.

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Adopted by the EIOPA Insurance and Reinsurance Stakeholder Group at Frankfurt am Main,  
27 January 2012.

The Chairperson of the EIOPA Insurance and Reinsurance Stakeholder Group  
Michaela KOLLER

**EIOPA INSURANCE AND REINSURANCE STAKEHOLDER GROUP – OPINION**

CONSULTATION - GUIDELINES ON COMPLAINTS-HANDLING BY INSURANCE UNDERTAKINGS – JANUARY 2012

<b>Comments Template on EIOPA-CP 11/010a and EIOPA-CP 11/010b</b> <b>Consultation Paper on the Proposal for Guidelines on Complaints-Handling by Insurance Undertakings and</b> <b>Draft Report on Best Practices by Insurance Undertakings in handling complaints</b>		<b>Deadline</b> <b>31 January</b> <b>2012</b> <b>12:00 CET</b>
Company name:		
Reference	Comment	
3.5.	These Guidelines shall apply to authorities competent for supervising complaints-handling by insurance undertakings in their respective jurisdiction and are recommended to apply to Governmental agencies responsible for Consumer protection as well.	
3.7.	<p><u>Definition Complaint:</u></p> <ul style="list-style-type: none"> <li>- Complaints have to be received by the insurance undertaking (so complaints e.g. on third party websites are not covered by these guidelines).</li> <li>- Complaints-handling should be differentiated from claims-handling as well as from simple requests for information or clarification.</li> <li>- In addition, from our experience it is practically very important to distinguish between pure expression of dissatisfaction (without the desire for a change or financial settlement with the complainant, often driven by political or social interests, e.g. human rights issues or shareholder expectations and also important, but being dealt with by other functions) and a real complaint (with the desire to reach a financial attribution, change in contract or similar). Therefore, we suggest to replace “dissatisfaction” with a stronger term, e.g. “annoyance”.</li> <li>- There is a necessity to clarify, in the text itself, the terms "complaints" and "claims" and to pay attention not to exclude any expression of dissatisfaction in the context of a claims handling procedure.</li> </ul>	
	<p><u>Definition Complainant:</u></p> <ul style="list-style-type: none"> <li>- Proposed wording: <i>A policyholder, insured person, beneficiary and in some jurisdictions, injured third party <b>who is presumed to be eligible to have a complaint related to an insurance product or service provided by an</b></i></li> </ul>	

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	<p><b><u>insurance undertaking and has already lodged a complaint.</u></b></p> <ul style="list-style-type: none"> <li>- The definition of the Complainant must include persons, striving for the coverage of risk and having been declined, e.g. bad health in disability insurance (by respecting the freedom of contract).</li> </ul>	
	<p><u>Definition Consumer</u></p> <p>Several European Directives contain a definition of a consumer which is recommended to be used: <b><u>“Consumer means any natural person who is acting for purposes which are outside his trade, business or profession.”</u></b> (DIRECTIVE 2002/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 September 2002).</p>	
3.9.	The "complaints management policy" includes a direct report to the Board or a specific person responsible for establishing and implementing such a policy and reporting on it to the Board on a regular basis.	
3.10.	We suggest that all affected staff should be trained and experienced regarding the policy and the process.	
3.11.	We agree that there should be clear responsibilities, but that the general freedom of organisation of internal functions (recital 31 DIRECTIVE 2009/138/EC) should not be impeded.	
3.12.	<ul style="list-style-type: none"> <li>- The guidelines should distinguish explicitly between the obligation to register and process complaints and the obligation to provide information to the supervisory authorities which is also subject to Guideline 4. Otherwise one could misinterpret Guideline 3 in a way that the supervisory authorities should be able to directly access the internal register.</li> <li>- We agree that Ombudsmen should not be entitled to receive information on the complaints management. Ombudsmen are not part of the supervision of insurance undertakings and should not be biased in their reasoning and decision taking in each individual case.</li> </ul>	
3.13.	<ul style="list-style-type: none"> <li>- There should not be a discretion of national authorities to set timelines, but EIOPA should ensure a level playing field for the timelines of responses, without setting strict timelines.</li> </ul>	

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	<ul style="list-style-type: none"> <li>- The triggers/sensitivity when to classify something as a complaint need to be clearly defined. There is concern that the proposed reporting obligations to supervisory authorities will lead to overly burdensome bureaucracy but little improvement with respect to consumer protection. In Germany, for example, the obligation of life insurers to provide yearly statistics to the supervisory authority on litigation proceedings has been eliminated from the reporting duties some years ago. This has been part of bureaucracy reduction. There are doubts that the introduction of additional reporting requirements really improves the customers position. In any case such reporting obligations should be introduced in a proportionate way, (e.g. only for insurance companies with a increased/above average/too high complaint/policy ratio) in order to avoid unreasonable efforts.</li> </ul>	
3.15.	<ul style="list-style-type: none"> <li>- We support the proposal that insurers provide consumers with their complaints-handling process. It should be clear that details of the process should not be made available to all clients, as this might rather cause irritations, as complaint management processes in commercial lines business significantly differ from those in consumer business.</li> <li>- We do not agree that identities of persons should be communicated on a mandatory basis, as individuals might frequently change their roles or company and updating will cause significant burden, whilst the consumer interest is to know the contact details of the relevant function.</li> <li>- After a final decision the undertaking should inform the consumer/third party accurately and efficiently about the possibility to start an ADR and support this procedure by disclosing the necessary details (if this information has not yet been given ; e.g. reference to Ombudsman).</li> </ul>	
3.16.	See 3.15	
Questions on the Impact Assessment		
Q1.	<ul style="list-style-type: none"> <li>- These Complaints-Handling Guidelines will help Competent authorities (including Insurance undertakings'</li> </ul>	



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	<p>Supervisory bodies and Governmental agencies responsible for Consumer protection) to reduce the number of cases presented to the Courts.</p> <ul style="list-style-type: none"><li>- The introduction of the guidelines should enhance in the meantime the reputation/profile of the insurance industry which therefore will in the end benefit as well as the consumers of such widespread procedures.</li><li>- The direct reporting line to the Board (?) enhances consumer focus within the insurance company and also enables them to improve organisational (?) structures and products by thoroughly analysing the complaints.</li><li>- These Complaints-Handling Guidelines could speed up process if the complaints is sent later to an ombudsman or an ADR.</li></ul>	