

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:	FECIF (European Federation of Financial Advisers and Financial Intermediaries)	
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>		

**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**

Reference	Comment	
General Comment	<p>A recent survey by an independent research institute in Austria on the frequency of complaints about insurance intermediaries shows that from a random sample of 7,063 cases of insurance intermediaries (brokers, agents, advisers), in 48 cases the customer complained and in three cases brought action against intermediaries to court. This is corresponding to a share of 1.22% complaints and 0.08% lawsuits.</p> <p>In the study a distinction was already made between</p> <ul style="list-style-type: none"> • informal complaints, in which customers were confused or dissatisfied with services or products; • formal and legal cases, in which a previous complaint did not lead to a satisfactory solution for the customer who then took legal action against the intermediary. <p>Almost 90% of all complaints are related to cases whose volume is up to € 1,000 measured in annual premiums or savings amount. A typical area of concern is insurance where services were not covered, e.g. household insurance or savings plans which did not deliver the expected performance.</p> <p>Reasons for complaints are:</p> <ul style="list-style-type: none"> • in 50% deficits resulting from economic development of financial / insurance markets and ongoing competition between vendors; • in 46% the default of insurance / financial products which did not meet expectations; • in 4% bad advice by the intermediary. <p>The possible solutions were also examined :</p> <ol style="list-style-type: none"> 1. The majority (57%) of all complaints are solved quickly by goodwill of the 	

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	<p>intermediary or the product provider;</p> <ol style="list-style-type: none"> 2. Almost a quarter (23%) of the cases ends because of withdrawal of the complaint or action by the customer; 3. For a further 10% other solutions are found (for example by court order); 4. 10% of cases remain to the reporting year without a solution. <p>There is no mistaking the evidence that customer dissatisfaction with intermediaries exists. However, this is only marginal and represents about 0.5 to 1.3% of all transactions. Typical reasons are a lack of information and knowledge about the products. Problems caused by bad or wrong advice occur in only one of nearly 2,000 business cases.</p> <p>Reference: "AFPA Marktstudie Österreich 2012". Austrian Financial and Insurance Professionals Association, a member of FECIF.</p>	
1.	<p>In many member states competent authorities, ombudsman or alternative dispute resolution (ADR) schemes are in place. As a way of improvement, we suggest existing institutions (as mentioned above) are integrated in the EIOPA Guidelines for Complaints Handling, including best practise experience from relevant EU members. For smaller intermediaries this will introduce a cost-effective way to simply redirect complaints straight to ADR schemes (such as an independent ombudsman). In countries without ADR schemes, such facilities should be implemented following best practise experience throughout Europe.</p>	
2.	<p>Such a guideline would be welcomed only if it recognised the specific differences in the business model and organizational structure of all market players affected. A "one size fits all" approach has to be avoided! Today's approach does not allow for a level playing field with other channels of distribution such as banks and online sales. There has to be one set of explicit rules for ALL types of insurance sales.</p>	
3.	<p>Simply publishing a pdf on the website of the regulation authority will not suffice to ensure that all</p>	

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	affected market players get the relevant information in time. It is necessary to proactively communicate the release of the new guideline e.g. through national associations such as national chambers of commerce or other co-regulatory bodies which usually have a close relationship to their members concerned.	
4.		
5.	<p>Authorities explicitly competent for supervising complaints handling by insurance intermediaries in their jurisdiction do not exist in every member state so far.</p> <p>For example in Austria</p> <ul style="list-style-type: none"> • the Financial Market Authority takes responsibility for the financial management of insurance companies; • the Ministry of Commerce takes responsibility for the so called trade act which governs certain qualifications and prerequisites for self employed intermediaries; • the Chamber of Commerce regulates access to the market for self employed intermediaries by certification and a code of conduct; • the local municipal authorities are dealing with the issue of quality of advice of independent intermediaries. However, their staff neither has training nor experience regarding this issue at all! • there is no authority for supervision of the quality of advice by banks and insurance companies. <p>In order to become implementable, the EIOPA guidelines need a national legal basis for the supervision of the quality of advice of ALL intermediaries, regardless if they are entrepreneurs or employed by insurance companies or banks. These NCAs need skilled staff.</p>	
6.		
7.	When applying these Guidelines A proportionate regime that takes into account the nature and size of insurance intermediaries is crucial. In order to avoid 28 different interpretations the criteria	

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	for proportionate application have to be specified by EIOPA on a European level. Otherwise we fear the transposition would be at the discretion of the national regulators which to our experience tend to gold-plating. This usually leads to more severe burdens than initially intended by the European regulator.	
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10.	There should be one consistent approach for claims handling for all types of financial products. As the guidelines define the context of how to deal with complaints and do not affect the content itself there are overwhelming similarities in complaints about investments, insurance products, credits or any other financial product. EIOPA has to be in line with the other ESAs, especially ESMA. In reality many insurance intermediaries also act as investment advisers and therefore need ONE scheme for dealing with complaints instead of different hence confusing regulations.	
11.		
12.	EIOPA ideally publishes a check-list with detailed provisions on insurance intermediaries' handling of complaints. This should be a pre-printed form. Whoever is processing complaints according to this check-list can be secure about doing things right. The check-list can be stored for documentation, too, or be the blue-print for IT complaints systems.	
13.	This certainly has to be standardised in order to avoid time consuming schemes for dealing with complaints that an intermediary is not even responsible for.	
14.		
15.	Ideally EIOPA publishes a master matrix for a proper complaints management policy or at least defines certain criteria which have to be accomplished by the senior management. Otherwise the 28 national regulators (at least if there are supervisors competent for complaints in member states) would define their own 28 different regimes which would only lead to confusion and prohibit unconstrained cross-border business.	
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17.	EIOPA shall define criteria defining the most appropriate manner to run the written or electronic register. As the number of complaints about insurance intermediaries is very low and most of Europe's intermediaries are SMEs, for them it should be sufficient to keep a log according to EIOPAS criteria.	
18.	EIOPA shall define WHO is the competent national authority especially in those cases where member states did not implement an authority competent for complaints handling. And EIOPA shall also define differentiation of criteria because otherwise 28 different regimes would be the result - once again a huge burden for free insurance services and cross-border business.	
19.	WHO is personally competent to do these controls? HOW are the criteria for success or failure? WHAT would be the consequences in case of multiple failure? These are questions to which EIOPA has to deliver answers as a guideline also for national regulators.	
20.	As already mentioned above a detailed description of the complaints procedure is desirable in order to avoid misunderstandings and to achieve a coherent European regulation. On the other hand, the more detailed the procedures are, the more the effort expected by the intermediary. Dealing with complaints, whether they are justified or not, takes hours or even one or few working days for research, communication, legal advisory and documentation. Against the background of the current discussion about remuneration of intermediaries, EIOPA shall define rules for financial compensation for the working time and reimbursement of cash outlays necessary for dealing with complaints. This becomes even more important if one bears EIOPA's own position in mind, "that in terms of expected costs, it is expected that NCAs will have to incur significant costs with supervising insurance intermediaries and may be forced to reorganise their supervisory practices so as to monitor compliance with the Guidelines by insurance intermediaries." It is already common practise under MiFID that national regulators charge intermediaries for their supervision! NCAs will be tempted to do the same with insurance intermediaries and simply share their rising costs by billing reimbursements of expenses. A further drain on finances would be the result which especially for SMEs would be critical and	

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	endanger the retention of their businesses.	
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Q1. - on Impact Assessment	<p>Most complaints about bad advice concern the direct sales of banks and insurance companies. This once again is shown by the data of the UK Financial ombudsman: 65.5% of consumers' complaints are against banks, only 1% against intermediaries.</p> <p>Against this background the main benefit for customers is that banks selling insurance products and insurance companies have to uphold commitments when dealing with complaints. So far there is no standardized scheme for dealing with such occurrence which in turn makes it difficult if not impossible to protect one's rights in case of complaints. With a mandatory EIOPA guideline insurance companies are forced to manage complaints in an expectable manner, respecting deadlines and modality. Customers and intermediaries will get reactions more quickly than now and in a reliable quality. The NCAs in addition supervise the whole procedure and keep the pressure on insurance companies by continuous independent controls.</p>	
Q2a. - on Impact Assessment	<p>This will highly depend on the size of the intermediaries business. Assuming that most insurance intermediaries are SMEs their senior management will begin with studying the guidelines, followed by legal consultation, coordination of training for the staff and necessary office tools including forms and checklists. Larger companies will have to nominate one or more employees in charge for complaints who then need instruction and guidance. Overall we estimate an effort of approx. two working days for the senior management of SMEs.</p>	

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Q2b. - on Impact Assessment	<p>Against the background of the extremely low rate of complaints and the fact that most insurance intermediaries are SMEs, complaints handling usually will be done on paper and not via IT systems. Therefore the introduction of the registration system for complaints handling will cause approx. one working day. Costs will be kept within reasonable limits and to a certain extent depend on the way clients prefer to complain, either via e-Mail, phone, postal letter or face to face meetings.</p>	
Q2c. - on Impact Assessment	<p>If the terms “complaint” and “mediation activity” are interpreted narrowly as “a statement of dissatisfaction addressed to an insurance intermediary about his/her advice” the costs associated with an insurance intermediary’s senior management overseeing the complaints handling process will be low. For most SMEs effort will be approx. one hour per month. This is evidenced by</p> <ol style="list-style-type: none"> 1. the low rate of complaints which show that only 4% of the cases are originated because of bad advice by the intermediary while 96% of all complaints are related to deficits resulting from economic developments of financial / insurance markets and ongoing competition between vendors or the default of products; 2. the fact that 80% of all complaints are solved quickly without any dispute with the intermediary simply by goodwill or the withdrawal of the complaint or action by the customer. <p>If there was a wider interpretation of these terms as “each statement of dissatisfaction addressed to an insurance intermediary”, regardless whether the reason is the service OR the product, market developments or anything else outside the sphere of influence of the intermediary, the effort for complaints handling would be larger and for most SMEs be at min. one hour per day. This is apparent from the fact that in practice the majority of clients knows the intermediary and no one else. The intermediary is the one and only contact person and</p>	

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	<p>confident.</p> <p>A proposal that these guidelines should not apply where “an insurance intermediary handles a complaint on behalf of another financial institution under the legal provisions applicable to that institution” would be purely hypothetical. Considerign that trust into his service is the decisive factor, no intermediary would and could allow absconding oneself by simply refering a complaining client to an anonymous financial institutions. To draw an analogy, such a situation would be similar to a customer buying a car with defects and therefore calling his own car-dealer for explanations but getting no help from, except but the phone number of the car factory. It is plainly evident that this very dealer would never sell a second car to the that client.</p>	
<p>Q2d. - on Impact Assessment</p>	<p>If the terms “complaint” and “mediation activity” are interpreted narrowly as “a statement of dissatisfaction addressed to an insurance intermediary about his/her advice” the on-going costs for the introduction of the registration system will be low.</p> <p>there was a wider interpretation ot these terms as “each statement of dissatisfaction addressed to an insurance intermediary” it would become impossible to foresee the required effort in terms of complaints management. This could range from one hour per day to a full time job and as such poses unnecessary and largefinancial risks especially for SMEs. The costs will also depend on the type of service and the kind of products offered by intermediaries. If an intermediary has a narrow range of services and products, e.g. because he exclusively sells car insurance, then the complaints procedure can be standardized for one service / product, thus keeping expenditures at a low level. Conversely, an intermediary selling a broad range of products and offerring highly sophisticated services for various clients will have to deal with much more complex complaints, thus entailing high effort and expenses. The efforts will also depend on the number of branches and employees of an intermediary. We simply have to avoid a situation where intermediaries constrain their supply of products and services because of burdensome and costly red-tape.</p>	

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Q3. - on Impact Assessment	Maximisation of profits is the main driver for today's management of insurance companies. Cost-cutting measures through headcount reduction stand next. This trend has intensified in the last years, resulting in loss of know-how, poor quality of service and therefore an increasing number of complaints about insurers (also towards intermediaries). In addition, an ever bigger part of the insurers work is outsourced to intermediaries, such as calculation of premiums, claims settlement or intervention in case of premium defaults. We have to avoid a situation where SME intermediaries assume responsibility for the workload of insurers on the one hand and become responsible for complaints outside of their sphere of influence on the other. All that without receiving additional remuneration or maybe no remuneration whatsoever by insurers but being forced, at the same time, to bill the client for handling his complaints. (It goes without saying that the client would immediately reject such a tweak.)	
Best Practices Report Comments (EIOPA-CP-13/006b)		