

9 November 2011

## **Consultation Paper**

**On:**

**a) The Proposal for Guidelines on  
Complaints-Handling by Insurance  
Undertakings (EIOPA- CP-11/010a)**

**b) Draft Report on Best Practices by  
Insurance Undertakings in handling  
complaints (EIOPA- CP-11/010b)**

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# 1. Responding to this paper

EIOPA welcomes comments on the Consultation Paper on the Proposal for Guidelines on Complaints-Handling by Insurance Undertakings and the Draft Report on Best Practices by Insurance Undertakings in handling complaints.

The full consultation package includes:

- Proposal for Guidelines on Complaints-Handling by Insurance Undertakings (EIOPA-CP-11/010a)
- Draft Report on Best Practices by Insurance Undertakings in handling complaints (EIOPA-CP-11/010b)
- Template for comments on documents EIOPA-CP-11/010a and EIOPA-CP-11/010b.

Please send your comments to EIOPA in the provided Template for Comments, by e-mail to [cp-010@eiopa.europa.eu](mailto:cp-010@eiopa.europa.eu) by 31 January 2012.

Contributions not provided in the provided template for comments or sent to a different email address or after the deadline will not be processed.

EIOPA invites comments on any aspect of this paper (except for paragraphs 3.17 and 3.18 for the reasons highlighted in footnote 9). Comments are most helpful if they:

- respond to a question (where provided);
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

## Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with EIOPA's rules on public access to documents<sup>1</sup>. We may consult you if we receive such a request. Any decision we

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<sup>1</sup> [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/aboutceiops/Public-Access-\(EIOPA-MB-11-051\).pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/aboutceiops/Public-Access-(EIOPA-MB-11-051).pdf)

make not to disclose the response is reviewable by EIOPA's Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.eiopa.europa.eu](http://www.eiopa.europa.eu) under the heading 'Legal notice'.

## 2. Consultation Paper Overview & Next Steps

EIOPA carries out consultations in the case of Guidelines in accordance with Article 16(2) of 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 (hereafter “the EIOPA Regulation”).

This Consultation Paper, which presents the draft Guidelines, is being issued to:

- (i) 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;
- (ii) give guidance on the provision of information to consumers; and
- (iii) give guidance on procedures for responding to complaints, thereby ensuring the adequate protection of policyholders and beneficiaries.

The analysis of the expected impact from the proposed policy is covered under the Annex I (Impact Assessment)

Specific questions relating to the Guidelines are being asked for the purpose of the impact assessment only; otherwise, comments on the Guidelines are expected paragraph by paragraph. Both answers to the questions on the Impact Assessment and comments paragraph by paragraph should be provided by using the template for comments provided by EIOPA.

### Next steps

EIOPA will consider the feedback received and expects to publish a final report on the consultation by [date] and aims to submit the Guidelines on Complaints-Handling by Insurance Undertakings for adoption by the Board of Supervisors by 29-30 March 2012.

### 3. Guidelines on Complaints-Handling by Insurance Undertakings

#### Introduction

3.1. Having regard to Article 16 of the EIOPA Regulation and taking into account Recital 16 and Articles 41, 46, 183 and 185 of Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance ("Solvency II Directive")<sup>2</sup>, which provide for the following:

- "The main objective of insurance and reinsurance regulation and supervision is the **adequate protection of policyholders and beneficiaries**....."<sup>3</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>4</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>5</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>6</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>7</sup>.

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<sup>2</sup> OJ L 335, 17.12.2009, p. 1–155

<sup>3</sup> Recital 16

<sup>4</sup> Article 41(1) first para.

<sup>5</sup> Article 46(1)

<sup>6</sup> Article 183(1) second para.

<sup>7</sup> Article 185(3)(l)

- 3.2. Whereas to ensure the adequate protection of policyholders, the arrangements of insurance undertakings for handling all complaints that they receive should be harmonised.
- 3.3. These Guidelines shall apply from their final date of publication.
- 3.4. These Guidelines are issued by EIOPA under the powers set out in Article 16 of the EIOPA Regulation.
- 3.5. These Guidelines apply to authorities competent for supervising complaints-handling by insurance undertakings in their jurisdiction.
- 3.6. Competent authorities must make every effort to comply with these Guidelines in accordance with Article 16(3) in relation to the arrangements of insurance undertakings for handling all complaints that they receive. National legal or regulatory requirements can go into further detail than these Guidelines. In such instances, the competent authority will be asked to inform EIOPA about the further detail, but this will not be seen as non-compliance if that further detail does not contradict these Guidelines<sup>8</sup>.
- 3.7. For the purpose of these Guidelines only, the following indicative definitions, which do not override equivalent definitions in national law, have been developed:
- *Complaint* means:  
  
An expression of dissatisfaction addressed to an insurance undertaking by a person relating to the insurance contract or service he/she has been provided with.  
  
N.B. Complaints-handling should be differentiated from claims-handling as well as from simple requests for information or clarification.
  - *Complainant* means:  
  
A person who is presumed to be eligible to have a complaint considered by an insurance undertaking and has already lodged a complaint e.g. a policyholder, insured person, beneficiary and in some jurisdictions, injured third party.
  - *Consumer* means:  
  
A person to whom an insurance contract is proposed or who has concluded a contract of insurance with an insurance undertaking or the beneficiary.

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<sup>8</sup> N.B. As with paragraphs 3.17 and 3.18, further analysis is being carried out on this issue in EIOPA.

3.8 Furthermore, where an insurance undertaking receives a complaint about:

- (i) activities other than those regulated by the “competent authorities” pursuant to Article 4(2), EIOPA Regulation; or
- (ii) the activities of another financial institution for whom that insurance undertaking has no legal or regulatory responsibility

these Guidelines do not apply. However, that insurance undertaking should respond to the consumer, where possible explaining the insurance undertaking's position on the complaint and, where appropriate, giving details of the insurance undertaking or other financial institution responsible for handling the complaint.

3.9 Please note that more detailed provisions on insurance undertakings' internal controls when handling complaints are contained in a “Draft Best Practices Report on Complaints-Handling by Insurance Undertakings” (EIOPA-CP-11/010b).



## **Guideline 1 - Complaints management policy**

3.10. Competent authorities should ensure that:

- A “complaints management policy” is put in place by insurance undertakings. This policy should be defined and endorsed by the insurance undertaking’s senior management, who should also be responsible for its implementation and for monitoring compliance with it.
- This “complaints management policy” is set out in a (written) document e.g. as part of a “general (fair) treatment policy” (applicable to consumers, insured persons, injured third parties and beneficiaries etc.).
- The “complaints management policy” is made available to all relevant staff of the insurance undertaking through an adequate internal channel.

## **Guideline 2 - Complaints management function**

3.11. Competent authorities should ensure that insurance undertakings have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.

## **Guideline 3 – Registration**

3.12 Competent authorities should ensure that insurance undertakings register complaints in accordance with national timing requirements in an appropriate manner (for example, through a secure electronic register) to be used, among other purposes, for internal and external reporting (e.g., competent national authorities, ombudsman etc.).

## **Guideline 4 - Reporting**

3.13 Competent authorities should ensure that insurance undertakings provide information on complaints and complaints-handling to the competent national authorities/ombudsman. This data should cover the number of complaints received, differentiated by classes.

## **Guideline 5 - Internal follow-up of complaints-handling**

3.14 Competent authorities should ensure that insurance undertakings analyse, on an on-going basis, complaints-handling data, to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks, for example, by:

- (i) Analysing the causes of individual complaints so as to identify root causes common to types of complaint;
- (ii) Considering whether such root causes may also affect other processes or products, including those not directly complained of; and
- (iii) Correcting, where reasonable to do so, such root causes.

## **Guideline 6 - Information to consumers**

3.15 Competent authorities should ensure that insurance undertakings:

- On request or when acknowledging receipt of a complaint, provide consumers with their complaints-handling process.
- Publish details of their complaints-handling process in a manner easily accessible to all consumers and the general public, for example in brochures, pamphlets, contractual documents or via the insurance undertaking's website.
- Provide information about the complaints-handling process, which is clear, accurate and up-to-date and includes:
  - (i) details of how to complain and, in particular: the type of information to be provided by the complainant, the identity and contact details of the person or department to whom the complaint should be directed;
  - (ii) the process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged, indicative handling timelines, the availability of a competent authority, an ombudsman or ADR etc.).
- Keep the complainant informed about further handling of the complaint.
- When an insurance undertaking provides a consumer with a final decision (or earlier, where national rules require it), remind the complainant about possible subsequent means of redress e.g. the availability of an ombudsman, ADR, national competent authority etc.

## **Guideline 7 - Procedures for responding to complaints**

3.16 Competent authorities should ensure that insurance undertakings:

- Seek to gather and investigate all relevant evidence and information regarding the complaint.
- Communicate in plain language, which is clearly understood.
- Provide a response without any unnecessary delay or at least within the time limits set at national level. When an answer cannot be provided within the expected time limits, the insurance undertaking should inform the complainant about the causes of the delay and indicate when the insurance undertaking's investigation is likely to be completed.
- When providing a final decision, include a thorough explanation of the insurance undertaking's position on the complaint and set out the consumer's option to maintain the complaint e.g. the availability of an ombudsman, alternative dispute mechanism, national competent authorities, etc.

## Compliance and Reporting<sup>9</sup>

- 3.17 This document contains Guidelines issued under Article 16, EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, Competent Authorities and financial institutions must make every effort to comply with guidelines and recommendations.
- 3.18 Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, by [date].

## Final Provision on Review

- 3.19 These Guidelines shall be subject to a review by EIOPA by [date]

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<sup>9</sup> N.B. Further analysis is being carried out in EIOPA on the practical impact of “Compliance and Reporting” under Article 16 and this section may be elaborated further at a later date. Therefore, comments are not being sought on this section at this time.

# Annex I: Impact Assessment

## Problem Identification

In analysing the practices of complaints-handling among insurance undertakings, patterns of information asymmetry can be observed, in that undertakings may not handle complaints in the best interests of policyholders and policyholders are unlikely to know the standards to which an undertaking should adhere. This type of market failure has been dealt with in national regulatory systems in various ways, which leads to divergent supervisory practices and varying levels of consumer protection.

In order to steer a harmonised approach to consumer outcomes, EIOPA suggests the introduction of the proposed Guidelines, aiming at mitigating a regulatory failure due the current lack of harmonising regulation at EU level.

As specified in the introduction to this Consultation Paper<sup>10</sup>, the proposed Guidelines have a threefold objective for enhancing complaints-handling and fairer treatment of consumers.

## Qualitative assessment of the expected benefits and costs

Below there is a qualitative overview of the expected benefits and costs from the introduction of the proposed Guidelines. It is important to specify, at the outset, that based on data provided by national authorities, the majority of the policies introduced in these Guidelines are already in place. For the purpose of highlighting the need for harmonisation in the approach to complaints-handling on EU level, EIOPA undertook to describe the proposed policies. These policies are based on regulations and practices currently available at national level.

In cases where the respective proposed policies are not in place already, for certain policy aspects (e.g. costs for communication, software, changing insurance contracts in which the current complaints procedure is explained), there might be some costs generated. However, at this stage, EIOPA is of the opinion that these costs are outweighed by the benefits expected to flow from the proposed policies.

The pros and cons outlined below are assessed as the incremental change from the proposed Guidelines against current national practice, which is the baseline for a qualitative analysis of the impact.

## Complaints Management Policy

### Pros

The introduction of a Guideline on a complaints management policy is intended to streamline the current practices at national level and to highlight the importance of having a documented process for complaints-handling by undertakings.

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<sup>10</sup> See section 2 "Consultation Paper Overview & Next Steps"

The proposed policy is also directed towards encouraging adequate internal communication about the complaints-handling process in those undertakings.

An important benefit that flows from the proposed policy is the requirement for an endorsement of the complaints-handling policy by undertakings' senior management. This requirement is focused on introducing a quality assurance element in the complaints-handling process.

### **Cons**

There are no significant costs expected with the development of such an internal complaints-handling policy.

## **Complaints Management Function**

### **Pros**

It is expected that the introduction of a complaints management function can facilitate the fair investigation of complaints as well as the identification and mitigation of possible conflicts of interest in the insurance undertaking.

It is also expected that this will lead to increased efficiency and effectiveness in the activity of complaints-handling.

The complaints management function, in combination with the requirement for root cause analysis, is expected to help improve product design, operational processes and sales practices by institutionalising a learning process.

The complaints management function overseeing complaints-handling is also expected to enhance the coordination with supervisory authorities and supervisory effectiveness.

The complaints management function can ensure that complaints are handled with a view to preventing costly legal action and potential negative publicity.

### **Cons**

From the data on complaints-handling provided by EIOPA members, it is revealed that half of Member States already have a requirement for a specific appointed individual to oversee complaints-handling in insurance undertakings.

In cases where there is no complaints management function, insurance undertakings might be expected to incur very low one-off costs in rearranging the internal systems to nominate a management representative to oversee the complaints handling processes.

Specifically costs may be expected to be incurred by small undertakings, as they might be particularly affected. However, further analysis is necessary to assess the potential costs.

## **Registration**

### **Pros**

With regard to insurance undertakings, the proposed policy intends to streamline and highlight the importance for better knowledge about the risks related to undertakings' activities.

The proposed policy focuses on improved consumer outcomes, by institutionalising a process for tracking complaints cases and procedures. This is also aimed at improving the consistency of management information.

In addition, the registration system will facilitate the proposed root cause analysis and may help improve product design, operational processes and sales practices due to institutionalising a learning process.

The registration system will facilitate the reporting of complaints-handling statistics.

For cases where the supervisory authority is involved in the process, the registration system will enable improved collaboration with supervisory authorities and more efficient supervision as a result.

### **Cons**

Where such a system is not in place, it can be expected that the industry may incur some initial one-off, as well as on-going, costs from the introduction of a registration system. In order to better assess the expected costs, it is necessary to know how many insurance undertakings already have such a system. Also, the number of insurance undertakings expected to be affected by the Guidelines and their estimates for the one-off costs and the on-going costs need to be considered.

Depending on the requirements for a registration system, it could be more difficult for small insurance undertakings to operate in the market but further analysis is needed.

It has to be considered as well that these Guidelines do not impose a particular timeframe, therefore there are no costs associated with this aspect.

## **Reporting**

### **Pros**

Based on data provided by EIOPA Members, undertakings in 15 Member States are already required to report on complaints-handling to the supervisory authority and/or ombudsmen. Data provided by EIOPA Members also reveals heterogeneous practices among Member State as to the types of information required by undertakings. The proposed Guidelines introduce a streamlined approach intended to enhance the information available to supervisors and the comparability of data.

EIOPA believes that the benefits associated with introducing this Guideline, are that reporting can improve the organisation of data on complaints.

Insurance undertakings will have an incentive to improve the internal handling of complaints in terms of communication and solutions for tracking the complaints handling procedures. Thanks to the accumulation and dynamics of individual and aggregate figures year on year, specific failures related to a given type of contract or a given insurance undertaking may arise.

In addition, undertakings can have an additional incentive to improve quality of products and services provided, to reduce the volume of complaints. Economic behaviour research leads to conclusions that there is a direct relationship between corporate reputation and financial performance<sup>11</sup>

Regarding the reporting of complaints differentiated by classes, currently there are requirements for the classification of complaints in 18 Member States (based on current data provided by EIOPA Members). The classification is elaborated either by the market, the ombudsmen, the supervisory authorities or the undertakings themselves. EIOPA considers it beneficial introducing a general requirement for the information on complaints to be provided to supervisory authorities or ombudsmen differentiated by classes, as better structured data can facilitate comparison with a view to efficient supervisory outcomes.

Potentially, the benefits could be material if complaints-handling procedures or product design improves. Complaints-handling could be improved through increased supervisory attention, but product design may only improve if the savings from claims avoided outweigh the costs of changing products.

## **Cons**

For undertakings in Member States where there is no such requirement already, there might be certain costs expected for undertakings while generating/providing the required information.

There might also be costs (initial and on-going) for those supervisory authorities/ombudsman, which currently do not require information on quantity and classes of complaints by undertakings.

## **Internal follow-up of complaints**

### **Pros**

The proposed policy stimulates prompt, effective and on-going analysis of the root causes of complaints.

The proposed policy also provides incentives for industry to consider and commit to remedying such causes.

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<sup>11</sup> Sabate, J. M. and Puente, E. (2003), Empirical analysis of the relationship between corporate reputation and financial performance: A survey of the literature, *Corporate Reputation Review*, 6:2, pp. 161-177.



The proposed policy is aimed at helping ensure fair treatment to current and future customers.

### **Cons**

Where there are no such requirements for undertakings to undertake root cause analysis, it might be expected that some initial and on-going costs are expected in the implementation of the proposed policy.

### **Information to consumers**

#### **Pros**

The proposed policy is intended to harmonise an existing practice in most Member States. According to data provided by EIOPA Members, information on complaints-handling procedures and parties involved is compulsory in most Member States.

The means through which insurance undertakings provide this information, however, varies, as it can be through insurance undertakings' general policy or in the insurance contracts or in insurance undertakings' decisions on claims. With a view to fostering transparency of the complaints-handling process, EIOPA proposes that it should be made available in a manner easily accessible to all consumers.

In addition, the provision on the publication of the complaints-handling process creates incentives for undertakings to develop a quality process and a structured approach for complaints-handling, which enhances fairer treatment of consumers.

#### **Cons**

Only where there are no such requirements for insurance undertakings to provide information about the complaints-handling process to consumers, it might be foreseen that some initial and on-going costs are expected (e.g. communication, publication, software development, etc.).

### **Procedures for responding to complaints**

#### **Pros**

The proposed policy fosters timely response and action on complaints by insurance undertakings.

With regard to the actual timing of the responses to complaints, according to data provided by EIOPA Members, in 12 Member States, there are already time-limits introduced and these are of a consistent nature. Therefore, the proposed policy highlights the need for undertakings to respond in the time limits set at national level.

## Cons

Where there are no time limits introduced at national level or the principle for responding to customers complaints as soon as possible is not applied, there might be some costs associated with introducing internal procedures and the relevant communication paths.

### **Questions on the Impact Assessment**

1. What benefits may be expected to flow from the introduction of these Complaints-Handling Guidelines?
2. What benefits may be expected as far as the knowledge of the risks related to the activities of the insurance undertaking is concerned?
3. Do you foresee other costs/negative impacts from the proposed policy options which we should take into consideration?
4. Please provide your estimate of the expected one-off and on-going costs associated with introducing a senior management representative overseeing the complaints handling process and with the introduction of the registration system for complaints-handling.