



EIOPA-IRSG-13-08

**IRSG Opinion on EIOPA Proposal for  
Guidelines on Complaints-Handling by  
Insurance Intermediaries  
and**

**Draft Report on Best Practices by Insurance  
Intermediaries in handling complaints**

(Public consultation of EIOPA-CP-13/006a and  
EIOPA-CP-13/006b)

## EIOPA INSURANCE AND REINSURANCE STAKEHOLDER GROUP – OPINION

PUBLIC CONSULTATION - IRSG'S OPINION ON EIOPA PROPOSAL FOR GUIDELINES ON COMPLAINTS-HANDLING BY  
INSURANCE INTERMEDIARIES – JUNE 2013

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### **Introduction and legal basis:**

In March 2013, EIOPA initiated the public consultation on the guidelines on Complaints-Handling by Insurance Intermediaries.

These Guidelines have been produced based on provisions of Article 16 of the EIOPA Regulation and taking into account Recital 22 and Articles 10 and 11 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ("The IMD" which provide for the following:

- "There is a need for suitable and effective complaint and redress procedures in the Member States in order to settle disputes between insurance intermediaries and customers using, where appropriate, existing procedures" (Recital 22).
- "Member states shall ensure that procedures are set up which allow customers and other interested parties, especially consumer associations, to register complaints about insurance and reinsurance intermediaries. In all cases complaints shall receive replies" (Article 10).

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

- (i) Clarify the expectations relating to an insurance intermediaries internal system in relation to complaints - handling and possible follow-up and render it more effective;
- (ii) give guidance on the provision of information about complaints handling procedures to consumers; and
- (iii) 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 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:**

The Insurance and Reinsurance Stakeholder Group (IRSG) welcomes the opportunity provided by EIOPA to comment on EIOPA Proposal for guidelines on complaints handling by insurance intermediaries and on EIOPA draft report on best practices by insurance intermediaries in handling complaints.

The IRSG believes that complaints handling should be regarded as a high priority for the insurance sector. The IRSG generally agrees with EIOPA that these guidelines on complaints handling by insurance intermediaries will ensure a complete circle of protection with EIOPA guidelines for insurers issued last year. Effective, fair and harmonized internal complaints handling is critical for

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---

reinforcing European consumers' confidence and for ensuring a similar protection of these latter across the European Union.

The IRSG welcomes the fact that EIOPA decided to draw up different but consistent guidelines for each type of players in the insurance sector, intermediaries and insurers. It ensures coherence and compatibility between both complaints handling systems - which is crucial for supervisory and consumer protection reasons - and allows to take into account the specificities of each type of insurance market participants.

The IRSG notes that most of the existing national requirements for the complaints process are aligned with the EIOPA proposed guidelines. In Ireland for example, the Consumer Protection Code outlines the complaints process that intermediaries (indeed all regulated entities) must adhere to. The intermediary is required to endeavor to resolve the complaint and where it is not possible the complaint is then referred to the Financial Services Ombudsman who will investigate the complaint and issue a finding.

With respect to the scope of the draft guidelines, the IRSG agrees with EIOPA that it should cover and promote internal complaints-handling procedures for insurance intermediaries. Internal procedures are efficient and ensure consumer protection and confidence. It is essential that each intermediary firm have the ability to deal with a complaint before it is referred to ADR.

The IRSG agrees with EIOPA (point 7 (introduction) of its draft guidelines) that particular attention must be paid to the very diverse nature and size of the insurance intermediation market in the EU.

The IRSG believes that it is crucial that these Guidelines are applied in a manner which is proportionate to the size of insurance intermediaries (mainly SMEs) in order not to create disproportionate and unnecessary administrative burdens.

The IRSG believes that there is a need for a proportionality provision to be included in the Guidelines.

The IRSG proposes that one of the following sentences - as included in the draft report on Best Practices - are included in guidelines 2 to 8: ***“taking into account the nature and size of insurance intermediaries in light of the principle of proportionality” or “depending on the size and structure of the intermediary”.***

EIOPA has cited various recitals and articles of the Insurance mediation Directive as one of the basis for these guidelines, and in particular Recital 11, Articles 2.3, 10 and 11. The IMD is currently being revised and a European Commission proposal is being discussed by the European Parliament and the Council of the EU. That proposal has a wider scope and different definitions than the ones of the current IMD. Once the IMD II adopted the IMD will be repealed.

The IRSG believes that the draft Guidelines should reflect that situation and that any EIOPA review of the guidelines should ensure coherence with EU legislative developments.

In relation to the Impact Assessment (IA) the IRSG rejects the assertion that significant costs will have to be incurred by NCAs as a result of the adoption of the Guidelines as inferred under Option 1, section h) of the IA in Annex I of the Consultation Paper. Any costs associated with the additional

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supervision required following the implementation of a system of complaints handling for intermediaries should be “marginal”.

### **Specific observations regarding EIOPA draft guidelines on guidelines on Complaints-Handling by Insurance Intermediaries**

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

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Adopted by the EIOPA Insurance and Reinsurance Stakeholder Group via written procedure on 06 August 2013.

The Chairperson of the EIOPA Insurance and Reinsurance Stakeholder Group

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<p><b>Comments Template on EIOPA-CP13/006a and EIOPA-CP 13/006b</b></p> <p><b>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</b></p>		<p><b>Deadline</b>  <b>28 June 2013</b>  <b>12:00 CET</b></p>
Company name:	Insurance and Reinsurance Stakeholder Group (IRSG) - DRAFT ANSWER	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.	Public
<p><b>Please follow the instructions for filling in the template:</b></p> <ul style="list-style-type: none"> <li>⇒ <u>Do <b>not</b> change the numbering in column "Reference", or any other formatting in the file.</u></li> <li>⇒ 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.</li> <li>⇒ 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"> <li>○ 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.</li> <li>○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment relating to the corresponding paragraph.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:CP-13-006@eiopa.europa.eu">CP-13-006@eiopa.europa.eu</a>, in <u>MSWord Format</u>, (our IT tool does not allow processing of any other formats).</b></p> <p>The paragraph numbers and questions below correspond to document no. EIOPA-CP-13/006a.</p> <p>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	See general observations above.	
1.	See general comments	
2.		
3.		
4.		
5.	The IMD recast proposal includes a new article 7 that addresses a new division of competence between home and host member state supervisors, covering a new Article 12 on complaints. The IRSG believes that this will have to be taken into account in the review that EIOPA will undertake of the Guidelines.	
6.	The IRSG believes that for legal certainty, more clarity from EIOPA around Comply or Explain rules would be helpful.	
7.	See general comments	

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8.	See general comment	
9.		
10.		
11.		
12.		
13.		
14.		
15.	The IRSG proposes that the following sentences - as included in the draft report on Best Practices - are included in guidelines 2 to 8: « <i>taking into account the nature and size of insurance intermediaries in light of the principle of proportionality</i> ” or “ <i>depending on the size and structure of the intermediary</i> ”.	
16.	The IRSG believes that it is important that this principle is not impeded and that insurance intermediaries can organise their internal functions in a appropriate fashion.	
17.	See comments on 15.	

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	The IRSG believes that the cost of the introduction of a possible electronic online secure register should be further assessed, particularly for small to medium sized intermediaries.	
18.	See comments on 15. The IRSG believes that it is important that reporting rules do not lead to administrative burden for intermediaries without adding any value to the supervision of national competent authorities.	
19.	See comments on 15	
20.	See comments on 15	
21.	See comments on 15	
22.	The IRSG believes that for legal certainty more clarity from EIOPA around Comply or Explain rules would be helpful.	
23.	The IRSG believes that for legal certainty, more clarity should be given regarding the interaction of EIOPA guidelines with national legislations or existing supervisors' guidelines.	
24.	The IRSG believes that for legal certainty, more clarity should be given regarding possible inconsistencies between EIOPA guidelines and national legislation.	

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25.	The IRSG believes that for legal certainty, more clarity should be provided on the consequences of non-compliance by an NCA.	
26.	The IRSG believes that any review by EIOPA should take into consideration the revision of IMD.	
Q1. - on Impact Assessment	<p>The IRSG expects the following positive impacts to flow from the introduction of the Complaints Handling Guidelines;-</p> <ul style="list-style-type: none"> <li>• Introduction of national requirements (where none exist)for internal complaints handling process by intermediaries in the first instance and in the event of the failure of the process to achieve a satisfactory resolution, that the consumer be informed of/directed to other means of redress (ombudsman, ADR etc...).</li> <li>• Introduction of harmonised internal complaints handling to reinforce consumers' confidence and to ensure similar levels of consumer protection throughout the EU.</li> <li>• Introduction of complaints handling process proportionate to the risks and the size of intermediaries and also the number of complaints received by intermediaries.</li> </ul>	
Q2a. - on Impact Assessment	(see general comments)	
Q2b. - on Impact Assessment	(see general comments)	
Q2c. - on Impact Assessment	(see general comments)	

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Q2d. - on Impact Assessment	(see general comments)	
Q3. - on Impact Assessment	As stated above, it is important that EIOPA guidelines are proportionate to the risks and the size of intermediaries, and also to the number of complaints received by intermediaries. Each complaint is different. It is important that EIOPA guidelines do not lead to a too strict and rigid system.	
Best Practices Report Comments(EIOPA-CP-13/006b)	There are very useful references to the need for a proportionate regime and examples of it in the draft Best Practices report. This is not reflected in the eight guidelines which are the only text subject to the "comply or explain" mechanism.	