

Consultation Paper

On:

**a) The Proposal for Guidelines on
Complaints-Handling by Insurance
Intermediaries (EIOPA-CP-13/006a)**

**b) Draft Report on Best Practices by
Insurance Intermediaries in handling
complaints (EIOPA-CP-13/006b)**

Table of Contents

Responding to this paper	3
Consultation Paper Overview & Next Steps	4
1. Guidelines on Complaints-Handling by Insurance Intermediaries	5
Introduction	5
Guideline 1 – Ensuring the right entity deals with the complaint.....	8
Guideline 2 – Complaints management policy	8
Guideline 3 – Complaints management function	8
Guideline 4 – Registration	8
Guideline 5 – Reporting.....	8
Guideline 6 – Internal follow-up of complaints-handling	9
Guideline 7 – Provision of information	9
Guideline 8 – Procedures for responding to complaints	9
Annex I: Impact Assessment	11

Responding to this paper

EIOPA welcomes comments on the Consultation Paper on the Proposal for Guidelines on complaints-handling by insurance intermediaries and the Draft Report on Best Practices by insurance intermediaries in handling complaints.

The consultation package includes:

- Proposal for Guidelines on Complaints-Handling by Insurance Intermediaries (EIOPA-CP-13/006a)
- Draft Report on Best Practices by Insurance Intermediaries in handling complaints (EIOPA-CP-13/006b)
- Template for comments on documents EIOPA-CP-13/006a and EIOPA-CP-13/006b

Please send your comments to EIOPA in the provided Template for Comments, by email CP-13-006@eiopa.europa.eu, by 12h00 CET on 28 June 2013.

Contributions not provided in the 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. Comments are most helpful if they:

- respond to the question stated;
- 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 documents¹. We may consult you if we receive such a request. Any decision we 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 under the heading 'Legal notice'.

¹ [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)

Consultation Paper Overview & Next Steps

EIOPA carries out consultations in the case of Guidelines and Recommendations in accordance with Article 16(2) of (EU) No 1094/2010 of the 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 intermediary'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 about complaints-handling procedures; 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). A comparison of the finalised Guidelines on complaints-handling by insurance undertakings and these draft Guidelines on complaints-handling by insurance intermediaries and of the finalised Report on Best Practices by insurance undertakings in handling complaints and the draft Report on Best Practices by insurance intermediaries in handling complaints, is contained in Annex II.

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 submit the Guidelines on complaints-handling by insurance intermediaries for adoption by EIOPA's Board of Supervisors by [date tbc] and publish a final report on the consultation by [date tbc].

1. Guidelines on Complaints-Handling by Insurance Intermediaries

Introduction

1. According to Article 16 of the EIOPA Regulation² and taking into account Recital 22 and Article 10 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ("the IMD")³, 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"⁴.
 - "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"⁵.
2. To ensure the adequate protection of policyholders, the arrangements of insurance intermediaries for handling all complaints that they receive should be subject to a minimum level of supervisory convergence.
3. These Guidelines shall apply from their final date of publication.
4. These Guidelines are issued by EIOPA under the powers set out in Article 16 of the EIOPA Regulation.
5. These Guidelines apply to authorities competent for supervising complaints-handling by insurance intermediaries in their jurisdiction. This includes circumstances where the competent authority supervises complaints-handling under EU and national law, by insurance intermediaries doing business in their jurisdiction under free provision of services or freedom of establishment.
6. Competent authorities must make every effort to comply with these Guidelines in accordance with Article 16(3) of the EIOPA Regulation in relation to the arrangements of insurance intermediaries for handling all complaints that they receive.

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, OJ L 331 15.12.2010 p. 48

³ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation Official Journal L 009 , 15/01/2003 P. 3 - 10

⁴ Recital 22

⁵ Article 10

7. Competent authorities should ensure a proportionate regime when applying these Guidelines that takes into account the nature and size of insurance intermediaries.
8. These Guidelines apply to complaints (as defined below) relating to natural and legal persons which carry out the activity of “insurance mediation” as defined by Article 2(3), IMD.
9. For the purpose of the Guidelines below, the following indicative definitions, which do not override equivalent definitions in national law, have been developed:
 - *Complaint* means:

A statement of dissatisfaction addressed to an insurance intermediary by a person relating to the mediation activities of the intermediary in accordance with the definition of “insurance mediation” in Article 2(3), IMD. Complaints-handling should be differentiated from claims-handling as well as from simple requests for execution of the insurance contract, information or clarification.
 - *Complainant* means:

A person who is presumed to be eligible to have a complaint considered by an insurance intermediary and has already lodged a complaint e.g. a policyholder, insured person, beneficiary and in some jurisdictions, injured third party.
10. These Guidelines do not apply where:
 - (i) an insurance intermediary receives a complaint about activities other than those regulated by the “competent authorities” pursuant to Article 4(2), EIOPA Regulation⁶; or
 - (ii) an insurance intermediary handles a complaint on behalf of another financial institution under the legal provisions applicable to that institution.

⁶ Article 4(2), Regulation 1094/2010 provides:

‘competent authorities’ means:

- (i) *supervisory authorities as defined in Directive 2009/138/EC [Solvency II Directive], and competent authorities as defined in Directive 2003/41/EC [IORP Directive] and 2002/92/EC [IMD];*
- (ii) *with regard to Directives 2002/65/EC [Distance Marketing of Consumer Financial Services] and 2005/60/EC [Anti-Money Laundering Directive], the authorities competent for ensuring compliance with the requirements of those Directives by financial institutions as defined in point (1).*

11. Where the Guidelines do not apply for the reasons set out in paragraph 10(i), the intermediary should respond, where possible, explaining the insurance intermediary's position on the complaint.
12. Please note that more detailed provisions on insurance intermediaries' internal controls when handling complaints are contained in the "Report on Best Practices by Insurance Intermediaries in handling complaints" (EIOPA-XX-XX/XXX).

Guideline 1 – Ensuring the right entity deals with the complaint

13. Where a complaint is received by an insurance intermediary for which another insurance entity is responsible, and the insurance intermediary does not handle the complaint on behalf of that insurance entity, the insurance intermediary should inform the complainant and direct the complaint to the relevant insurance entity.
14. Where an insurance intermediary complies with this Guideline, it shall not be required to handle the complaint under Guidelines 2 to 8.

Guideline 2 - Complaints management policy

15. Competent authorities should ensure that:
 - a) Insurance intermediaries put in place a complaints management policy. This policy should be defined and endorsed by the insurance intermediary's senior management, who should also be responsible for its implementation and for monitoring compliance with it.
 - b) This complaints management policy is set out in a (written) document e.g. as part of a "general (fair) treatment policy" (applicable to actual or potential policyholders, insured persons, injured third parties and beneficiaries etc.).
 - c) The complaints management policy is made available to all relevant staff of the insurance intermediary through an adequate internal channel.

Guideline 3 - Complaints management function

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

Guideline 4 – Registration

17. Competent authorities should ensure that insurance intermediaries register, internally, complaints in accordance with national timing requirements in an appropriate manner (for example, through a secure electronic register).

Guideline 5 - Reporting

18. Competent authorities should ensure that insurance intermediaries are in a position to provide information on complaints and complaints-handling to the competent national authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant.

Guideline 6 - Internal follow-up of complaints-handling

19. Competent authorities should ensure that insurance intermediaries 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:
- a) Analysing the causes of individual complaints so as to identify root causes common to types of complaint;
 - b) Considering whether such root causes may also affect other processes or products, including those not directly complained of; and
 - c) Correcting, where reasonable to do so, such root causes.

Guideline 7 – Provision of information

20. Competent authorities should ensure that insurance intermediaries:
- a) On request or when acknowledging receipt of a complaint, provide written information regarding their complaints-handling process.
 - b) Publish details of their complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or via the insurance intermediary's website.
 - c) Provide clear, accurate and up-to-date information about the complaints-handling process, which includes:
 - (i) details of how to complain (e.g. 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 alternative dispute resolution (ADR) scheme etc.); and
 - d) Keep the complainant informed about further handling of the complaint.

Guideline 8 - Procedures for responding to complaints

21. Competent authorities should ensure that insurance intermediaries:
- a) Seek to gather and investigate all relevant evidence and information regarding the complaint;
 - b) Communicate in plain language, which is clearly understood;
 - c) 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 intermediary should inform the complainant about the causes of the delay and indicate when the insurance intermediary's investigation is likely to be completed; and

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

Compliance and Reporting Rules

22. This document contains Guidelines issued under Article 16 of the EIOPA Regulation⁷. In accordance with Article 16(3) of the EIOPA Regulation, Competent Authorities and financial institutions shall make every effort to comply with guidelines and recommendations.
23. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
24. Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, by [dd mm yyyy].
25. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

Final Provision on Review

26. These Guidelines shall be subject to a review by EIOPA.

⁷ EIOPA Regulation (EU) No 1094/2010 of 24 November 2010

Annex I: Impact Assessment

Part I

1. Procedural issues and consultation of interested parties

1.1.1. This document aims to provide the **Impact Assessment (hereafter, "IA")** on EIOPA's draft Guidelines on complaints-handling by insurance intermediaries. It is based on Recital 47 and Article 16(2), EIOPA Regulation⁸, which set out that:

- *"Before adopting (...) guidelines (...), the Authority [i.e. EIOPA] should carry out an impact study"⁹;*
- *"The Authority shall, where appropriate, conduct open public consultations regarding the guidelines (...) and analyse the related costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines (...)"¹⁰.*

1.1.2. EIOPA is committed to implementing smart regulation principles when exercising its statutory powers as laid down in the European Commission's Communication of 2010 on "Smart Regulation in the European Union"¹¹. Smart regulation promotes transparency and high-quality decision-making, through *ex ante* impact assessment and monitoring of the adequacy and effectiveness of the pieces of regulation as of their entry into force.

1.1.3. IA entails the adoption of a step-by-step methodology, the phases of which can be summed up as follows:

- (i) Problem(s) identification;
- (ii) Objective(s) definition;
- (iii) Listing of policy options and evaluation of their impacts;
- (iv) Comparison of policy options (in accordance with the envisaged benefits and costs associated therewith); and
- (v) Justification of preferred policy solution(s).

1.1.4. Further to the approval of the Guidelines on complaints-handling by insurance undertakings¹², EIOPA's Board of Supervisors (BoS) mandated the Committee

⁸ 'EIOPA Regulation' stands for Regulation (EU) no. 1094/2010 of the European Parliament and of the Council, dated 24 November 2010, which establishes the European Insurance and Occupational Pensions Authority (EIOPA) and governs its competence, organisation and functioning. EIOPA Regulation amended Decision no. 716/2009/EC and repealed Commission Decision 2009/76/EC.

⁹ Recital 47, EIOPA Regulation.

¹⁰ Article 16 (2), EIOPA Regulation.

¹¹ Brussels, 8.10.2010 COM(2010) 543 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0543:FIN:EN:PDF>

¹² The Guidelines on complaints-handling by insurance undertakings (available at the following hyperlink: <https://eiopa.europa.eu/publications/eiopa-guidelines/index.html>) were approved by the BoS meeting in June 2012. The draft Guidelines were submitted to public consultation from November 2011 to January 2012 (see the consultation

on Consumer Protection and Financial Innovation (CCPFI) to work on Guidelines on complaints-handling by insurance intermediaries. For that purpose, CCPFI set up a subgroup which was tasked with preparing draft Guidelines. Member States were invited to provide written comments on successive versions of the Guidelines and to discuss their wording/ contents at CCPFI meetings. Thus, Member States were able to provide input according to their supervisory experience and regulatory expertise.

1.5. In order to anticipate and evaluate the impact the Guidelines would have upon persons such as consumers¹³ and other interested parties, insurance intermediaries and **competent national supervisory authorities (hereafter, "NCAs")**, EIOPA conducted a mapping exercise amongst CCPFI Members regarding existing national regulation on complaints-handling by intermediaries and its effectiveness. The evidence put forward in this IA was mainly collected from the responses to the mapping exercise. **The conclusions drawn from the survey are described in Part II of this Impact Assessment¹⁴.**

1.6. It is important to note that the IA focuses on the eight Guidelines which – upon approval by the BoS – are intended to be subject to the 'comply or explain' reporting procedure, as stipulated by Article 16(3), EIOPA Regulation¹⁵. Due to the fact that:

- The introductory paragraphs to the Guidelines (numbered 1 to 12) are not subject to the "comply or explain" reporting procedure¹⁶; and
- Impact assessments produced by EIOPA should be "proportionate in relation to the scope, nature and impact of the Guidelines" (Article 16(2), EIOPA Regulation),

the contents of the 'Introduction' to the Guidelines are excluded from the scope of this IA.

documents at <https://eiopa.europa.eu/consultations/consultation-papers/2011-closed-consultations/november-2011/guidelines-on-complaints-handling-by-insurance-undertakings/index.html>.

¹³ **The Guidelines include indicative definitions of certain key terms ("complaint" and "complainant"); however, competent authorities are not required to use these definitions and they do not override those used in national law. The Guidelines do not seek to prescribe who is able to make a complaint. This is a matter for the discretion of competent authorities acting within their national law. The Impact Assessment uses the terms "consumer" and "customer" depending on the context as there are both references in the Impact Assessment to persons who deal with insurance intermediaries generally and references to persons whom a national competent authority might determine to be eligible to make a complaint under the Guidelines. N.B. It is recognised that, at national level, other terms such as "policyholder", "insured person", "beneficiary", "injured third parties" and "consumer associations" might be equally appropriate.**

¹⁴ Please refer to pages 21-26 of this document.

¹⁵ Pursuant to Article 16(3), EIOPA Regulation, *"The competent authorities and financial institutions shall make every effort to comply with those guidelines and recommendations. Within 2 months of the issuance of a guideline (...) [the relevant date is the date when the translations of the Guidelines into the official languages of European Union are published], each competent authority shall confirm whether it complies or intends to comply with that guideline (...). In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority [i.e. EIOPA], stating its reasons"*.

¹⁶ For example, competent authorities do not need to report to EIOPA the fact that they adopt a different definition of "complaint" from the one suggested in the Introduction to the Guidelines (see paragraph 9 of the Guidelines)

2. Problem definition

- 2.1** It is recognised that, in the financial sector, there is typically an asymmetry of information between the entities which offer the products and services and the consumers who purchase them. Asymmetry of information is classically considered a **market failure** since it is seen as an example of a departure from the notion of a perfectly efficient market.

In particular, the insurance industry has evolved to design products aimed at purposes other than mere risk coverage e.g. investment and money saving. As a consequence, insurance contracts tend to be more complex and present risks that cannot be easily perceived by the average consumer. Undoubtedly, intermediaries play a pivotal role in providing the consumer with the necessary information and clarifications as well as to advise which products best match the consumer's needs and expectations. Intermediaries are also expected to evaluate the consumers' ability to incur the costs and financial risks associated to the insurance product.

Although intermediation (as opposed to marketing by direct writers i.e. insurance undertakings) is the most prominent distribution channel across Europe, consumers are not always provided with adequate mechanisms to complain about intermediaries' advice and selling practices.

Furthermore, it should be noted that consumers are often not in a position, because of a lack of information or knowledge, to judge whether an intermediary is actually acting in their best interests. This information asymmetry can allow an intermediary to provide advice or to push a sale that is in their interests rather than the consumer's (for example, selling a product that increases their remuneration, but is not suitable for the consumer). This conflict of interest, if not addressed, can lead to poor/inappropriate insurance sales for consumers, with associated detrimental outcomes.

- 2.2** Pursuant to Article 10, IMD1¹⁷ ["Complaints"], *"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"*.

Although Article 10, IMD1 helped to create a minimum level of harmonisation in the area of complaints-handling procedures, it was not sufficiently detailed in the sense that it did not state that complaints-handling procedures should be set up by insurance intermediaries. The fact that Article 10, IMD1 was minimum harmonising meant that there was no incentive for Member States to go further in applying Article 10, IMD1 to complaints-handling procedures within insurance intermediaries. This, in turn, has led to a very wide variety of different regulatory solutions at national level in areas such as procedures for complaints-handling by insurance intermediaries. The way Article 10, IMD1 was drafted is thus seen as having generated a **regulatory failure** at EU level since, although it was intended to have beneficial effects in the area of complaints-handling, it generated unforeseen or unintended consequences.

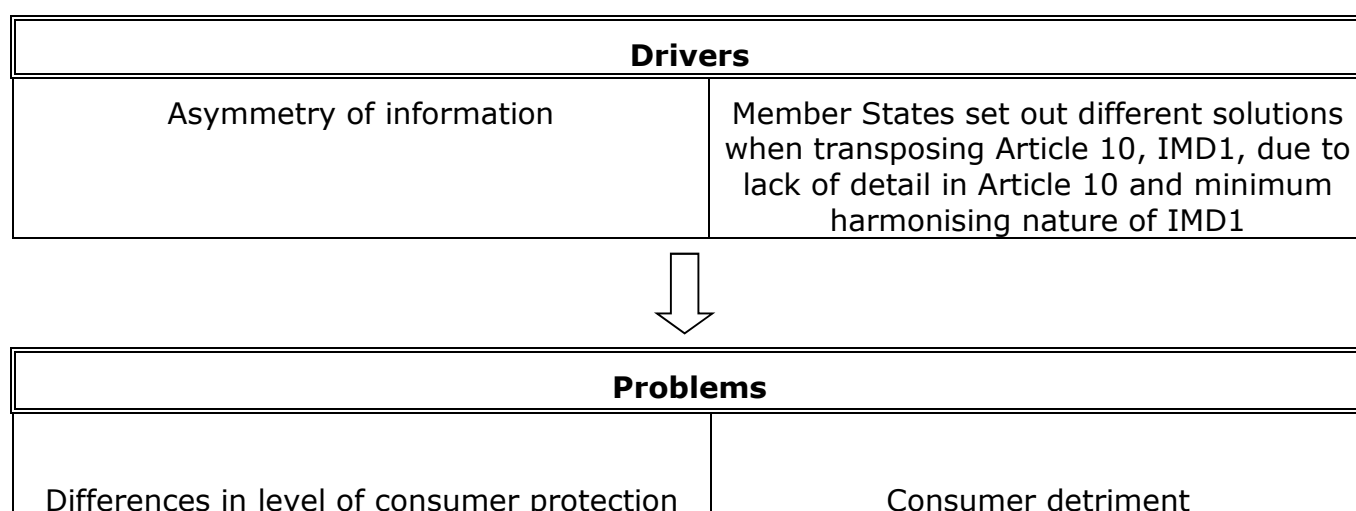
¹⁷ IMD1 stands for 'Insurance Mediation Directive': Directive 2002/92/EC of the European Parliament and of the Council, of 9 December 2002.

As a consequence, different rules apply depending on the jurisdiction where the insurance intermediary was incorporated, registered or operates. This leads to different supervisory approaches and may also lead to regulatory arbitrage (where compliance and operational costs vary significantly from one jurisdiction to another). Different supervisory approaches may constitute barriers to integration and sound competition between insurance intermediaries across the European market.

In the context of cross-border trade, consumers are granted more or less protection depending on the rules applicable to the intermediary they have come in contact with. This may lead to consumer detriment as consumers' complaints may not be handled properly when the intermediaries registered in one jurisdiction are not subject to adequate market conduct rules.

Appropriate complaints-handling can increase the likelihood that a consumer, if they are not treated appropriately by an intermediary, will obtain redress. This in turn incentivises intermediaries to act in the consumer's interests. In this way, the Complaints-Handling Guidelines help to address conflicts of interest between consumers and insurance intermediaries and thus improve the quality of redress and sales for consumers.

2.3 Following the aforementioned IA methodology¹⁸, EIOPA defined the following 'problem tree':



3. Objectives pursued

Bearing in mind the problems identified in the previous section, the issuance of the Guidelines aims to:

- (i) Create a level playing field for insurance intermediaries across the EU;
- (ii) Ensure fair treatment of complainants by insurance intermediaries.

¹⁸ Please see point 1.3. of 'Procedural issues and consultation of interested parties' above.

These policy objectives are related to EIOPA's statutory competence in the context of the European System of Financial Supervision¹⁹. According to Article 1(6), EIOPA Regulation, "the Authority shall contribute to: (a) improving the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision....(d) preventing regulatory arbitrage and promoting equal conditions of competition....(f) enhancing customer protection"²⁰. Furthermore, pursuant to Article 16(1), EIOPA Regulation, EIOPA is empowered to promote "consistent, efficient and effective supervisory practices" as well as to ensure "the common, uniform and consistent application of Union law"²¹.

4. Policy options and Analysis

The following key policy options have been considered in the process of developing Guidelines in order to mitigate the identified failures and achieve the mentioned objectives.

Below there is an overview of the impacts and expected costs and benefits resulting from the adoption of the proposed Guidelines.

Option 1: To develop Guidelines on complaints-handling by insurance intermediaries similar to those for complaints handling for insurance undertakings, with adjustments where appropriate

The discussion on whether to develop the Guidelines for insurance intermediaries was first held when preparing the Guidelines on complaints-handling by insurance undertakings. At that time, it was discussed whether a comprehensive regime (i.e. covering both insurance undertakings and insurance intermediaries) should be adopted.

- a) In the process of discussions and deliberations, it was agreed that the preferred option is to draw up different pieces of regulation for each type of participants in the insurance sector. This way, more attention would be placed on the specificities of each type of insurance market participant. Once the Guidelines concerning insurance undertakings were approved, EIOPA discussed whether to proceed with the drafting of Guidelines for insurance intermediaries.

¹⁹ According to Article 2(1), EIOPA Regulation, "The main objective of the ESFS [European System of Financial Supervision] shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services".

²⁰ Pursuant to Recital 10, EIOPA Regulation, "The Authority should protect public values such as (...) the protection of policyholders (...)".

²¹ According to Recital 7, EIOPA Regulation, "The Union cannot remain in a situation (...) where different interpretations of the same legal text exist". Quoting Recital 10 of the same Regulation, "The Authority should (...) prevent regulatory arbitrage, guarantee a level playing field (...) for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. Its tasks should (...) include promoting supervisory convergence (...)". EIOPA Regulation states that "ensuring the correct and full application of Union law is a core prerequisite for the integrity, transparency, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial institutions in the Union" [see Recital 26] and that "The Authority should actively foster supervisory convergence across the Union with the aim of establishing a common supervisory culture" [please refer to Recital 39]

- b)** It was agreed that, once the Guidelines on complaints-handling by insurance undertakings were approved, work should commence on Guidelines on complaints-handling procedures within or concerning insurance intermediaries in order to ensure that there is a comprehensive European regime covering both insurance undertakings and insurance intermediaries. (N.B. This was also reflected in EIOPA's 2012 Work Programme, which envisaged a specific workstream on Guidelines relating to insurance intermediaries). The Guidelines should be duly coordinated with the ones that had been approved for insurance undertakings so as to ensure consistency and compatibility between both complaints-handling systems.
- c)** As with the approach taken for insurance undertakings, EIOPA decided to focus on internal complaints-handling procedures for insurance intermediaries. The implementation of complaints-handling procedures within financial entities allows complaints to be dealt with more efficiently as the intermediary should have direct access to information and evidence needed to investigate and resolve the complaint. **EIOPA considered whether it would be more cost effective for smaller intermediaries (such as sole traders), simply to re-direct complaints straight to ADR schemes (such as an independent ombudsman). However, in order to ensure timely, efficient and consistent complaints-handling and encourage greater supervisory convergence and a level playing field, it was felt that it was important to ensure that all intermediaries adopt appropriate internal complaints-handling arrangements. The fact that intermediaries are required to handle complaints about their own activities provides a strong incentive for them to treat their customers in a way that minimises the number of complaints that they receive. Therefore, although the Guidelines do not preclude the re-direction of complaints to an ADR scheme since they are not legally binding, this not the objective of the Guidelines, which is to promote internal complaints-handling by insurance intermediaries.**
- d)** The implementation of internal procedures prevents segregation between those who deal with consumers and those who handle their complaints. In this way, complaints-handling becomes less time-consuming and more efficient (as there is no need to provide information to the external entity that is responsible for responding to the complainant) and contributes to preventing (or correcting) malpractice within the intermediary since the intermediary becomes more aware of the root causes of dissatisfaction deriving from its mediation activity. In short, therefore, internal procedures help intermediaries become more aware of their duties and contribute to averting reputational damage. Sound market conduct by intermediaries also generally helps to enhance consumer confidence and contributes indirectly to reinforcing confidence in the insurance sector.
- e)** Although it was decided to include all insurance intermediaries under the scope of the Guidelines, special attention was drawn to financial institutions which do not hold responsibility for the subject-matter of the complaint. In those cases, the complaint should be directed to the relevant insurance entity, which will handle the complaint thereafter. EIOPA opted not to refer to the categories of insurance

intermediaries set out in IMD1 (notably, tied agents²²) in order to adjust to the different national market structures. This way, the complaint will be handled in light of the rules applicable to the entity to whom the complaint was forwarded (see Guideline 1).

- f) Bearing in mind that EIOPA intends to promote supervisory convergence (refer to the objectives listed above), Guidelines are the most suitable legal instrument to achieve that objective. According to Article 16(1), EIOPA Regulation: "*The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS [European System of Financial Supervision], and to ensuring the common, uniform and consistent application of Union law, issue guidelines (...) addressed to competent authorities or financial institutions*".
- g) The Guidelines are addressed to the national supervisory authorities (and not to insurance intermediaries) so as to give flexibility for competent authorities to apply the rules on complaints-handling procedures. Moreover, some aspects may be subject to further clarification/ specification in national pieces of regulation (for example, the time limits for the insurance intermediary to respond to the complainant).
- h) 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 re-organise their supervisory practices so as to monitor compliance with the Guidelines by insurance intermediaries²³.
- i) The adoption of the Guidelines is a necessary condition for the achievement of the objective of establishing a level playing field with regard to complaints management within insurance intermediaries. Guidelines should also, through the action of NCAs, improve complaints-handling and, as a result, mitigate conflict of interests between intermediaries and consumers.

Option 2: whether to implement a complaints management function

CCPFI members discussed whether to implement a complaints management function within insurance intermediaries. The implementation of this function was established in the Guidelines on complaints-handling by insurance undertakings. Therefore, it was considered if it was reasonable to impose this on insurance intermediaries as well.

- a) The aim of the complaints management function is to ensure that the objective of fair treatment of complainants is pursued in a systematic and uniform manner, thus also ensuring that the insurance intermediary is in a position to handle effectively any complaint he receives. This function is expected to facilitate fair investigation of complaints as well as to mitigate possible conflicts of interest. Moreover, the complaints management function is expected to help improve

²² In some jurisdictions, sub-agents may also be included under the category of insurance intermediaries which do not hold full legal or regulatory responsibility for their activity.

²³ As concluded in the questionnaire (please refer to Part II, p. 25-26), most NCAs will have to start monitoring intermediaries with regard to new regulatory provisions.

selling and advice practices by fostering a systematic analysis and treatment of complaints.

- b) Arguing against the adoption of the complaints-handling function, some CCPFI members suggested that it would be cumbersome for insurance intermediaries and it would not be feasible in small insurance intermediaries. These Members emphasised that imposing this function might entail that insurance intermediaries would be forced to hire employees who would devote themselves to complaints management or even restructure their business so as to accommodate the referred function²⁴.
- c) EIOPA does not intend to impose a heavy burden on intermediaries' freedom of operation. However, EIOPA recognises that, in many cases, internal reorganisation may be necessary within insurance intermediaries (primarily on those which do not have internal procedures in place) in order to ensure full compliance with the principles in the Guidelines. This will entail on-going costs, which may be perceived as significant for smaller businesses.
- d) Bearing in mind that most Member States have implemented external procedures only²⁵, most intermediaries will have to incur one-off costs in adapting internal systems to accommodate a new function. Small insurance intermediaries (which constitute the overwhelming majority of registered players) will be particularly affected by the implementation of this function as conflicts of interest may be more likely to occur since the person responding to the complaint may well be the person whose activities the complaint relate to.
- e) The main costs involved will be operational. In fact, intermediaries will have to include a new function in their businesses, which may be time-consuming and lead to redistribution of internal responsibilities/ processes within their organisation models.
- f) The implementation of the complaints management function is in line with the definition of a complaints management policy. This policy should be drawn up in a written document and be duly endorsed by the senior management of the insurance intermediary. The involvement of the senior management confers a quality (and responsibility) assurance element to the internal procedures as senior management involvement may also increase incentives to comply and thus increase the overall likelihood of compliance with the Guidelines. No significant costs are associated with implementing such a complaints management policy²⁶.

Option 3: whether to establish a similar regime to the one designed for insurance undertakings as regards fair treatment of complainants

It has been considered whether insurance intermediaries should be subject to the same obligations as the ones already defined for insurance undertakings e.g.

²⁴ Please refer to number 2 of subpara. b) of Part II of this Impact Assessment, p. 24.

²⁵ Please see the figures indicated in numbers 1 and 2 of subpara. a) of Part II of this Impact Assessment, pp. 21-22.

²⁶ In fact, establishing written procedures is not considered to entail significant costs. Refer to page 24 of the report on the mapping exercise on complaints-handling by insurance intermediaries [see number 2 of subpara. b) of Part II of this Impact Assessment].

obligations connected with registration, internal follow-up of complaints-handling, provision of information and response to complaints.

a) EIOPA suggests that insurance intermediaries should comply with some principles when dealing with consumers. These obligations are common to the ones previously set for insurance undertakings and refer to:

- (i) Registration;
- (ii) Internal follow-up of complaints-handling;
- (iii) Provision of information; and
- (iv) Procedures for responding to complaints (please refer to draft Guidelines 4 and 6 to 8).

b) EIOPA acknowledges that intermediaries will have to incur costs, potentially from internal reorganisation, in complying with these Guidelines; however, it is considered that the benefits (cited below) outweigh these costs.

Costs

c) From the cited obligations, registration is foreseen to have the most significant impact on insurance intermediaries. Intermediaries may have to incur some initial one-off costs in order to implement an adequate registration system. On-going costs are also expected with regard to the maintenance and update of the registration system. Once again, small intermediaries will be particularly affected in terms of costs by the need to comply with registration obligations.

d) Other obligations are expected to primarily lead to initial one-off operational costs. In fact, insurance intermediaries will have to implement standard practices when handling complaints received. Considering that most Member States have implemented external procedures, the Guidelines under analysis will represent new obligations upon insurance intermediaries. Some of the on-going costs of handling complaints (internal follow-up of complaints and responding to complaints) are variable costs that increase with the number of complaints; these costs would be expected to fall as firms improve their practices and the number of complaints would also fall.

Benefits

e) The costs of implementing and maintaining valid registration systems are outweighed by the benefits arising thereof. In fact, registration facilitates access to information on complaints processes and allows the systematic analysis of their contents and the gathering of statistical information about the complaints management function. It also enables improved collaboration with NCAs and more efficient supervision as a result.

f) For other obligations, EIOPA foresees that the imposition of such obligations will help enhance awareness among intermediaries of the importance of conducting proper market practices in order to prevent reputational risk. It is expected that consumer confidence will be improved. Policyholders (and other interested parties) will be able to lodge their complaints with the entity which they have

sought to be advised by or to purchase an insurance product, expecting it to deal with the complaint adequately²⁷. This way, EIOPA expects to promote fair treatment of claimants, which is one of the objectives outlined for the enactment of the Guidelines under analysis.

- g)** Benefits related to enhanced consumer protection are not expected to be noticeable forthwith (as new procedures will have to be assimilated and adjusted to the business of insurance intermediaries). Once complaints-handling procedures are fully implemented within insurance intermediaries, the latter will be able to learn from the complaints, prevent reputational and legal risks and improve market conduct, which should improve outcomes for consumers. In this way, consolidated practices will promote a high level of consumer protection in Europe.

Option 4: whether to establish a similar regime to the one set out for insurance undertakings as regards reporting to the NCA/Ombudsman

CCPFI members discussed whether it was justified to impose reporting obligations on insurance intermediaries.

- a)** The main purpose in imposing reporting obligations on insurance intermediaries is to provide the NCA or the ombudsman with aggregate and updated information on the exercise of the complaints management function. This data will help supervisory activity and incentivise intermediaries to analyse and control the number and type of complaints against them. Therefore, it is a useful tool for controlling whether adequate treatment of consumers (and other interested parties) is being actually accomplished by insurance intermediaries. (N.B. One of the objectives pursued by issuing the Guidelines is to promote fair treatment of policyholders, insured persons, beneficiaries and injured third parties).
- b)** Despite this, with regard to reporting obligations, a different wording from the Guidelines on complaints-handling insurance undertakings was adopted²⁸. In fact, instead of imposing that intermediaries should provide data on complaints and complaints-handling, the draft Guidelines simply set out that intermediaries should be in a position to provide information. This policy decision aims to avoid imposing burdensome and periodic reporting obligations on intermediaries, which has also the advantage of preventing that national supervisory authorities have to receive and handle massive reporting flows. Supervision of compliance with this guideline should be carried out by on-site inspections or specific requests for the intermediary to provide information to the NCA.
- c)** Considering that EIOPA does not impose the obligation to provide national authorities with information on complaints and complaints-handling, no material costs are expected to be incurred by insurance intermediaries.

²⁷ Please note that some respondents to the questionnaire highlighted that enhanced consumer protection is expected from the implementation of the guidelines on complaints-handling by insurance intermediaries (see page 25).

²⁸ For ease of reference, please note that Guideline 4 of the Guidelines on complaints-handling by insurance undertakings sets out that "Competent authorities should ensure that insurance undertakings provide information on complaints and complaints-handling to the competent national authorities or ombudsman".

Part II: Report on the mapping exercise on complaints-handling by insurance intermediaries

The CCPFI's subgroup on complaints-handling by insurance intermediaries prepared a questionnaire in order to help build an evidence base for the IA, which accompanied the development of the Guidelines.

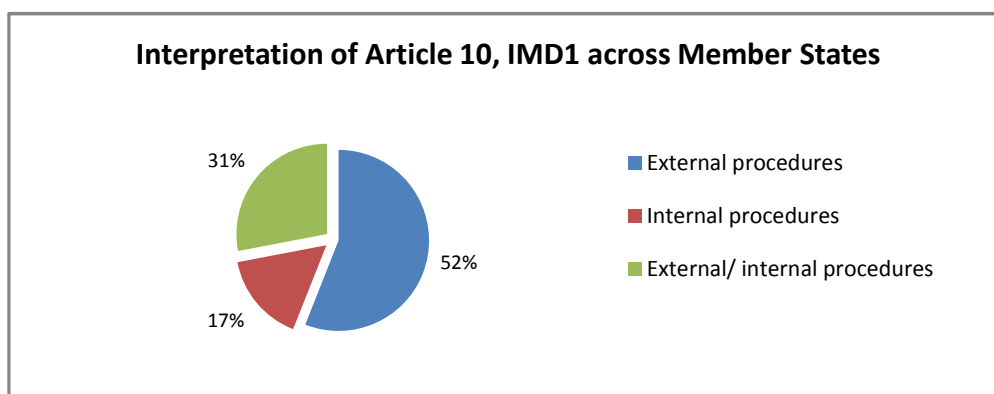
The questionnaire was responded to by **29 out of the 30 EU/EEA²⁹ Member States** (hereafter referred to collectively, for the purposes of this Part II, as "**Member States**").

a) National implementation of IMD1 with regard to complaints-handling procedures

1. The subgroup wanted to know how Article 10, IMD1 had been interpreted at national level (*i.e.* how Member States had transposed it into their national legal systems) – in particular, whether the aforementioned article had been construed as referring to external and/or internal complaints-handling procedures.

For the purposes of the survey, 'internal' complaints-handling was meant to refer to the procedures conducted within and by the insurance intermediary only. In turn, 'external' procedures refer to the handling of complaints by insurance undertakings (the ones the intermediary is connected with) and/or the referral of complaints, for instance, to NCAs, Ombudsmen, other public institutions or ADR³⁰ schemes.

According to the questionnaire, fifteen respondents³¹ have understood Article 10, IMD1 as applying to external complaints-handling procedures only. Nine Member States³² have combined both internal and external procedures. In turn, five Member States³³ answered that Article 10, IMD1 referred to internal procedures only.



2. Member States were asked whether – notwithstanding Article 10, IMD1 - they have enacted more detailed national rules governing complaints-handling within or concerning insurance intermediaries.

²⁹ EEA: acronym for 'European Economic Area'.

³⁰ ADR: 'Alternative Dispute Resolution'.

³¹ AT, BE, BG, CY, CZ, DE, FI, GR, IE, IS, IT, LI, LT, NO and PL.

³² DK, FR, LU, LV, MT, PT, RO, SE and SI.

³³ EE, HU, NL, SK and UK.

Half of respondents³⁴ do not have more detailed national rules, whereas the other half³⁵ have gone beyond the content of Article 10, IMD1.

Among the Member States that have more detailed rules, there are four Member States where procedures are governed by rules which have a broader scope of application, i.e. rules which do not intend to specifically govern complaints-handling concerning insurance intermediaries³⁶.

3. Member States were questioned whether they have set the same rules regarding internal complaints-handling by insurance undertakings and intermediaries.

From the respondents which have implemented internal procedures³⁷, nine Member States³⁸ referred to the fact that they have the same provisions both for insurance undertakings and insurance intermediaries. Five Member States³⁹ stated they have set different rules for both insurance undertakings and insurance intermediaries.

4. Member States, which have established internal complaints-handling procedures, were asked whether they have different national rules depending on the categories of the insurance intermediaries or other proportionality-based criteria (e.g. size or business complexity).

Two Member States have set different internal procedures regimes according to the categories of insurance intermediary. In fact, one respondent⁴⁰ has excluded tied agents from the scope of the rules on internal complaints-handling procedures. The other respondent⁴¹ has stipulated that only independent intermediaries (i.e. brokers) should implement internal procedures, whereas intermediaries which are more or less connected with the insurance undertaking (agents and tied agents) are not legally obliged to have internal complaints-handling procedures.

There was unanimity on not setting different rules based on other proportionality criteria⁴².

5. Member States which have implemented internal complaints-handling procedures were asked whether those rules focus on: complaints management policy; complaints management function; registration; reporting; internal follow-up of

³⁴ AT, BG, CY, DE, DK, GR, IS, IT, LU, LV, MT, NO, PL, SI.

³⁵ BE, CZ, DE, EE, FI, FR, HU, IE, LI, LT, NL, PT, RO, SE, SK, UK. Please note that CZ and IE have extended national rules to internal complaints-handling procedures, even though Article 10, IMD1 implementation covered only external complaints-handling (see footnote 31 above).

³⁶ CZ, FI, LT (in these Member States, the external procedures in place for handling complaints about insurance intermediaries are governed by general rules on public administration and/ or consumer protection) and PT [national law prescribes that all intermediaries shall have a complaints book (which follows a pre-determined model) where customers are allowed to register their complaints. The complaints written down in the book shall be directed to the NCA, which will handle with the complaints from then on. The obligation to have a complaints book is imposed, among other entities, on all establishments of insurance undertakings and insurance intermediaries].

³⁷ According to data previously indicated, 5 Member States have implemented internal procedures only and 9 have implemented combinations of internal and external procedures.

³⁸ EE, FR, HU, IE, LU, NL, SE, SI, UK. It should be noted that in LU and SE, rules for insurance undertakings and insurance intermediaries are set in different legal instruments but their contents are similar.

³⁹ CZ, LV, PT (there are more detailed rules on internal procedures within insurance undertakings), RO and SK.

⁴⁰ HU.

⁴¹ PT. The complaints regarding agents and tied agents are handled with by the corresponding insurance undertakings. As a consequence, the management of those complaints is governed by the provisions on complaints-handling by insurance undertakings. This notwithstanding, it should be noted the obligation of having a complaints book is applicable regardless of the category of the insurance intermediary.

⁴² Although from a consumer protection perspective, the NCA in FR applies the same principles and rules to all players in the insurance sector, it recognises the importance of the proportionality principle, by stating (in the relevant recommendations) that several rules (e.g. organisation of complaints handling) are applicable where the size and structure of the entity allow it.

complaints handling; provision of information; procedures for responding to complaints. These topics are the ones the Guidelines on complaints-handling by insurance undertakings refer to. The questions aimed to assess to what extent current internal procedures match the same requirements as the ones EIOPA has already defined for insurance undertakings.

- Most Member States have rules regarding a 'complaints management policy' being put in place by insurance intermediaries⁴³.
- Eight Member States do not have rules on a 'complaints management function' within insurance intermediaries⁴⁴.
- Most respondents have national provisions on registration of complaints⁴⁵.
- Ten Member States do not have rules which ensure that intermediaries provide information about complaints or complaints-handling to NCAs or ombudsman⁴⁶.
- Nine respondents do not have rules in place for ensuring that insurance intermediaries analyse, on an on-going basis, complaints-handling data (for example, assessing the root causes of complaints and taking preventive or remedial action)⁴⁷.
- With more or less detail⁴⁸, the respondents require that insurance intermediaries provide information about the complaints-handling procedures in place. Some of these provisions result from the transposition of IMD disclosure requirements.
- Most Member States have rules in place on how complaints should be responded to⁴⁹. National provisions primarily focus on: deadlines (whether defined internally or by legal instrument) to respond; complete investigation; language requirements of responses; provision of updated information on the progress of the complaint process; provision of further treatment of the complaint where the response provided by the insurance intermediary is not fully satisfactory.

b) Impact of introducing internal complaints-handling procedures at national level

- 1.** The subgroup wanted to assess if there is evidence on whether existing complaints-handling procedures concerning insurance intermediaries – either external or internal – are working well for consumers.

Most Member States referred to the fact that – up until now – the NCAs are not aware of special issues concerning the handling of complaints related to insurance intermediaries, especially because they have not been provided with

⁴³ EE, FR, HU, IE, NL, PT, SE, SI, SK, UK. In turn, CZ, LU, LV, MT do not have similar rules.

⁴⁴ CZ, LU, LV, MT, NL, PT, RO and SI. DK, EE, FR, HU, IE, SE, SK and UK have rules concerning the implementation of a 'complaints management function'. In IE, there is no specific requirement set out in national provisions. However, depending on the size of the regulated entity, it may need to have a dedicated function so as to fully comply with the national rules on complaints handling.

⁴⁵ EE, FR, HU, LU, NL, RO, SE, SK, UK. In CZ, LV, MT, PT and SI, there are no rules on the topic. Nonetheless, in MT, intermediaries are recommended to keep record of the complaints processes. Although it is not explicitly set out in national law, the obligation to register complaints is considered to be the 'basic' obligation to be complied with by brokers in PT.

⁴⁶ CZ, EE, HU, IS, LU, LV, MT, PT, RO, SE, SI. In FR and NL, reporting shall only take place upon request by the NCA as a result of a supervisory inspection/ off-site assessment.

⁴⁷ CZ, IS, LU, LV, MT, NL, PT, SI. In HU, IE and UK, intermediaries have to identify root causes or patterns of complaints. In EE and FR, intermediaries are recommended to identify shortcomings and wrong practices.

⁴⁸ FR and HU have more detailed provisions on this topic.

⁴⁹ CZ, EE, FR, HU, IE, RO, SE, SI, SK, UK.

significant or recurring evidence thereof (for instance, they have not received a significant number of complaints against insurance intermediaries)^{50/51}.

However, one Member State stated that its NCA has carried out supervisory procedures regarding complaints-handling by insurance undertakings and insurance intermediaries and had drawn the conclusion that internal procedures were not operating properly. Another respondent stated that through analysis of complaints, its NCA had been able to pinpoint some problems affecting intermediaries' customers, which had already led to enforcement proceedings (and the subsequent application of administrative fines). Moreover, another Member State informed that, subsequent to off-site inspections, enforcement action had been brought against some insurance intermediaries and further regulatory guidance had been issued.

Although many respondents reported that they did not have clear evidence of consumer detriment with regard to complaints-handling related to insurance intermediaries, it is worth noting that there is positive evidence of the added value which internal procedures are capable of generating. For instance, one Member State highlighted that it had received positive feedback on the implementation of internal procedures: e.g. intermediaries acknowledge that they now handle complaints more rapidly, thanks to the identification of a single point of entry for the complaints and to a clear allocation of responsibilities within the intermediary.

Some Member States (even those where there is no clear evidence that the system concerning handling of consumers' complaints is not working well) expressly made the point that they welcome the introduction of regulation establishing internal procedures within insurance intermediaries. Enhanced consumer protection is mentioned as a result of implementing or reinforcing internal complaints-handling procedures.

2. The subgroup also questioned Member States regarding what impact they would envisage, if they were to apply the Guidelines on complaints-handling by insurance undertakings to insurance intermediaries in their jurisdictions. Further to this, Member States were invited to provide their views on: (i) what changes insurance intermediaries would have to make to the existing systems and controls as well as their disclosure/ sales practices; (ii) what changes their NCA would have to make; (iii) how much these changes would cost and (iv) what advantages consumers would benefit from by introduction of the aforementioned Guidelines.

Four respondents reported that they had enacted common rules for both insurance undertakings and intermediaries and that those rules comply with the Guidelines on complaints-handling by insurance undertakings⁵². As a

⁵⁰ Some Member States refer that customers tend to find out alternative ways of lodging a complaint, thus not addressing the insurance intermediary itself directly. In Member States where internal procedures have been implemented alongside external procedures, this phenomenon may be explained by the lack of information on how to complain with the insurance intermediary or by the fact that consumers believe complaints are not dealt with properly by the intermediary [or – in a different interpretation – other procedures of dealing with consumers' complaints have proven to be more effective/ better match the complainants' interest]. According to many Member States, intermediaries usually inform clients about the possibility to lodge complaints before external entities. Therefore, apparently consumers do not totally lack protection.

⁵¹ One respondent claimed that its NCA is not legally empowered to investigate complaints concerning regulated financial entities. As a result, no information on the effectiveness of the national system could be provided. Another Member State referred that the implementation of complaints-handling procedures took place recently, so it is not possible to collect consistent evidence on this issue.

⁵² Within both of the aforementioned Member States, the only difference between EIOPA Guidelines and the national regimes is that the latter do not impose reporting obligations on insurance (undertakings and) intermediaries. The

result, the aforementioned Member States do not envisage a heavier burden on insurance intermediaries. They would not need to adapt internal controls, change disclosure practices or begin to comply with any new obligation. As a matter of fact, if the Guidelines on complaints-handling by intermediaries would end up differing from the ones applicable to insurance undertakings, national legislation would have to be amended in order to differentiate the regimes that apply to the two kinds of participants in the insurance market. The two respondents are of the view that consumer protection is guaranteed by imposing the same rules on insurance undertakings and insurance intermediaries.

Some Member States informed that complaints mainly arise from insurance undertakings' conduct (e.g. when designing the products) and so they are not based on the mediation activities carried out by insurance intermediaries. Furthermore, intermediaries tend to follow the instructions given by the respective insurance undertaking. Therefore, complainants usually lodge their complaints with the insurance undertaking, which is perceived as the responsible entity. Providing that external complaints-handling procedures prove to be efficient, consumers are not totally deprived of adequate protection.

Some Member States pointed out the fact that it would be cumbersome to impose the same Guidelines on complaints-handling by insurance undertakings, on insurance intermediaries, since, all over Europe, national markets are primarily made up of small intermediaries (including a significant number of sole traders)⁵³. To this extent, these operators would be forced to incur disproportionate costs (*vis-à-vis* their business complexity and/or organizational structure) if the same rules as the ones stipulated for undertakings would also apply to insurance intermediaries. The main foreseen costs would relate to the designation of a complaints management function and the introduction of a reporting obligation.

As regards the implementation of a complaints-handling management function, one Member State referred to the fact that it might force the intermediary to hire new employees. Another Member State mentioned that intermediaries would have to appoint an officer who would be responsible for the complaints-handling function and would have to coordinate with the NCA.

One Member State referred to the fact that most insurance intermediaries in the national market are tied agents, which means that they are strongly connected to the corresponding insurance undertaking. As they do not run the business in an autonomous manner, they do not seem to be in a position to adequately respond to complainants because of the potential for a conflict of interest.

Besides, NCAs would have to start monitoring insurance intermediaries with regard to additional imposed requirements. The costs involved in supervising insurance intermediaries are envisaged to be significant considering the number of insurance intermediaries registered in Europe⁵⁴.

costs derived from reporting are primarily linked to human resources allocation. In one of the respondents, complaints-handling function is not imposed upon insurance intermediaries.

⁵³ In Europe, sole traders represent the majority of registered insurance intermediaries.

⁵⁴ One Member State suggests that a restriction should be established with regard to the scope of insurance intermediaries that should implement internal complaints-handling procedures: only legal persons/ legal persons of systemic relevance should be included. This respondent stated that the implementation of internal procedures within these insurance intermediaries would be beneficial from a consumer protection perspective.

One Member State referred to the fact that insurance intermediaries and the NCA would incur costs, but it expressly admitted that those costs are reasonable considering that consumer protection would be enhanced. Two respondents mentioned that no excessive costs (in comparison with the predictable benefits) would be incurred by intermediaries or NCAs, except for the ones implied in compulsory reporting. In fact, NCAs would have to accommodate the increase of 'reporting flows' and process data from more sources (as more operators would be subject to reporting obligations). One respondent was of the view that there would only be moderate costs with laying down written procedures and reporting on a yearly basis.

As regards the impact on consumers, two Member States mentioned that it would be very difficult to ensure a fair treatment of complaints in small intermediaries (especially when they are one-man businesses), as there may be no clear separation between those who respond to the complaint and those who run the business. Thus, there might be a problem regarding impartial investigation and response to complaints.

One Member State indicated that the level of consumer protection would be enhanced, in particular by: (i) providing the responses to the complaints within a defined deadline; (ii) imposing internal follow-up with a view to tackling and preventing recurrent root causes of complaint and (iii) enabling an easier access to the information concerning the complaints-handling procedures in place.

Some respondents believe that making intermediaries handle consumer complaints themselves would have the advantage of enhancing awareness of the importance of complying with their obligations, correcting malpractice, mitigating reputational risk and improving market practices.

Questions on the Impact Assessment

1. What benefits/positive impacts do you expect to flow from the introduction of these Complaints-Handling Guidelines?
2. Please provide your estimate of the expected:
 - a) *One-off costs* associated with an insurance intermediary's senior management overseeing the complaints-handling process?
 - b) *One-off costs* for the introduction of the registration system for complaints-handling?
 - c) *On-going costs* associated with an insurance intermediary's senior management overseeing the complaints-handling process?
 - d) *On-going costs* for the introduction of the registration system for complaints-handling?
3. Do you foresee any other costs/negative impacts from the proposed policy options which we should take into consideration?

Annex II: Comparison of two sets of Guidelines and Best Practices Reports on Complaints-Handling by Insurance Undertakings and Insurance Intermediaries

Guidelines on complaints-handling by insurance undertakings vs. Guidelines on complaints-handling by insurance intermediaries

(Substantive differences in yellow)

Insurance Undertakings	Insurance Intermediaries
<p>Introduction</p> <p>1. According to Article 16 of the EIOPA Regulation⁵⁵ 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”)⁵⁶, which provide for the following:</p> <ul style="list-style-type: none"> • “The main objective of insurance and reinsurance regulation and supervision is the adequate 	<p>Introduction</p> <p>1. According to Article 16 of the EIOPA Regulation⁶² and taking into account Recital 22 and Article 10 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (“the IMD”)⁶³, which provide for the following:</p> <ul style="list-style-type: none"> • “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

⁵⁵ 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, OJ L 331 15.12.2010 p. 48

⁵⁶ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1

Insurance Undertakings	Insurance Intermediaries
<p>protection of policyholders and beneficiaries.....⁵⁷.</p> <ul style="list-style-type: none"> • “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”⁵⁸. • “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”⁵⁹. • In the case of <i>non-life insurance</i>, a duty for the insurance undertaking to “inform the policyholder of the arrangements for handling 	<p>customers, using, where appropriate, existing procedures”⁶⁴.</p> <ul style="list-style-type: none"> • “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”⁶⁵.

⁶²Regulation (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, OJ L 331 15.12.2010 p. 48

⁶³Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation Official Journal L 009 , 15/01/2003 P. 3 - 10

⁵⁷ Recital 16

⁵⁸ Article 41(1) first para.

⁵⁹ Article 46(1)

⁶⁴Recital 22

⁶⁵Article 10

Insurance Undertakings	Insurance Intermediaries
<p>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 proceedings⁶⁰.</p> <ul style="list-style-type: none"> In the case of <i>life insurance</i>, 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 proceedings⁶¹. <p>2. To ensure the adequate protection of policyholders, the arrangements of insurance undertakings for handling all complaints that they receive should be subject to a minimum level of supervisory convergence.</p> <p>3. These Guidelines shall apply from their final date of publication.</p> <p>4. These Guidelines are issued by EIOPA under the powers set out in Article 16 of the EIOPA Regulation.</p> <p>5. These Guidelines apply to authorities competent for</p>	<p>2. To ensure the adequate protection of policyholders, the arrangements of insurance intermediaries for handling all complaints that they receive should be subject to a minimum level of supervisory convergence.</p> <p>3. These Guidelines shall apply from their final date of publication.</p> <p>4. These Guidelines are issued by EIOPA under the powers set out in Article 16 of the EIOPA Regulation.</p> <p>5. These Guidelines apply to authorities competent for</p>

⁶⁰ Article 183(1) second para.

⁶¹ Article 185(3)(l)

Insurance Undertakings	Insurance Intermediaries
<p>supervising complaints-handling by insurance undertakings in their jurisdiction. This includes 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.</p> <p>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.</p> <p>7. For the purpose of the Guidelines below, the following indicative definitions, which do not override equivalent definitions in national law, have been developed:</p> <ul style="list-style-type: none"> • <i>Complaint</i> means: A statement of dissatisfaction addressed to an insurance undertaking by a person relating to the insurance contract or service he/she has been 	<p>supervising complaints-handling by insurance intermediaries in their jurisdiction. This includes circumstances where the competent authority supervises complaints-handling under EU and national law, by insurance intermediaries doing business in their jurisdiction under free provision of services or freedom of establishment.</p> <p>6. Competent authorities must make every effort to comply with these Guidelines in accordance with Article 16(3) of the EIOPA Regulation in relation to the arrangements of insurance intermediaries for handling all complaints that they receive.</p> <p>7. Competent authorities should ensure a proportionate regime when applying these Guidelines that takes into account the nature and size of insurance intermediaries.</p> <p>8. These Guidelines apply to complaints (as defined below) relating to natural and legal persons which carry out the activity of "insurance mediation" as defined by Article 2(3), IMD.</p> <p>9. For the purpose of the Guidelines below, the following indicative definitions, which do not override equivalent definitions in national law, have been developed:</p> <ul style="list-style-type: none"> • <i>Complaint</i> means: A statement of dissatisfaction addressed to an insurance intermediary by a person relating to the mediation activities of the intermediary in

Insurance Undertakings	Insurance Intermediaries
<p>provided with. Complaints-handling should be differentiated from claims-handling as well as from simple requests for execution of the contract, information or clarification.</p> <ul style="list-style-type: none"> • <i>Complainant</i> 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. <p>8. Furthermore, where an insurance undertaking receives a complaint about:</p> <p>(i) activities other than those regulated by the “competent authorities” pursuant to Article 4(2), EIOPA Regulation; or</p>	<p>accordance with the definition of “insurance mediation” in Article 2(3), IMD. Complaints-handling should be differentiated from claims-handling as well as from simple requests for execution of the insurance contract, information or clarification.</p> <ul style="list-style-type: none"> • <i>Complainant</i> means: A person who is presumed to be eligible to have a complaint considered by an insurance intermediary and has already lodged a complaint e.g. a policyholder, insured person, beneficiary and in some jurisdictions, injured third party. <p>10. These Guidelines do not apply where:</p> <p>(iii) an insurance intermediary receives a complaint about activities other than those regulated by the “competent authorities” pursuant to Article 4(2), EIOPA Regulation⁶⁶;</p>

⁶⁶ Article 4(2), Regulation 1094/2010 provides:

‘competent authorities’ means:

(iii) supervisory authorities as defined in Directive 2009/138/EC [Solvency II Directive], and competent authorities as defined in Directive 2003/41/EC [IORP Directive] and 2002/92/EC [IMD];

Insurance Undertakings	Insurance Intermediaries
<p>(ii) the activities of another financial institution for which that insurance undertaking has no legal or regulatory responsibility (and where those activities form the substance of the complaint)</p> <p>these Guidelines do not apply. However, that insurance undertaking should respond, where possible, explaining the insurance undertaking's position on the complaint and/or, where appropriate, giving details of the insurance undertaking or other financial institution responsible for handling the complaint.</p> <p>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).</p>	<p>or</p> <p>(iv) an insurance intermediary handles a complaint on behalf of another financial institution under the legal provisions applicable to that institution.</p> <p>11. Where the Guidelines do not apply for the reasons set out in paragraph 10(i), the intermediary should respond, where possible, explaining the insurance intermediary's position on the complaint.</p> <p>12. Please note that more detailed provisions on insurance intermediaries' internal controls when handling complaints are contained in a "Best Practices Report on Complaints-Handling by Insurance Intermediaries" (EIOPA-XX-XX/XXX).</p>

(iv) with regard to Directives 2002/65/EC [Distance Marketing of Consumer Financial Services] and 2005/60/EC [Anti-Money Laundering Directive], the authorities competent for ensuring compliance with the requirements of those Directives by financial institutions as defined in point (1).

Insurance Undertakings	Insurance Intermediaries
	<p data-bbox="1115 320 2051 395">Guideline 1 – Ensuring the right entity deals with the complaint</p> <p data-bbox="1115 472 2051 738">13. Where a complaint is received by an insurance intermediary for which another insurance entity is responsible, and the insurance intermediary does not handle the complaint on behalf of that insurance entity, the insurance intermediary should inform the complainant and direct the complaint to the relevant insurance entity.</p> <p data-bbox="1182 815 2051 927">Where an insurance intermediary complies with this Guideline, it shall <u>not</u> be required to handle the complaint under Guidelines 2 to 8.</p>
<p data-bbox="152 1007 887 1038">Guideline 1 - Complaints management policy</p> <p data-bbox="152 1114 909 1145">10. Competent authorities should ensure that:</p> <p data-bbox="226 1222 1088 1394">a) 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.</p>	<p data-bbox="1115 1007 1850 1038">Guideline 2 - Complaints management policy</p> <p data-bbox="1115 1114 1868 1145">14. Competent authorities should ensure that:</p> <p data-bbox="1189 1222 2051 1394">a) Insurance intermediaries put in place a complaints management policy. This policy should be defined and endorsed by the insurance intermediary’s senior management, who should also be responsible for its implementation and for monitoring compliance with it.</p>

Insurance Undertakings	Insurance Intermediaries
<p>b) This “complaints management policy” is set out in a (written) document e.g. as part of a “general (fair) treatment policy” (applicable to actual or potential policyholders, insured persons, injured third parties and beneficiaries etc.).</p> <p>c) The “complaints management policy” is made available to all relevant staff of the insurance undertaking through an adequate internal channel.</p>	<p>b) This complaints management policy is set out in a (written) document e.g. as part of a “general (fair) treatment policy” (applicable to actual or potential policyholders, insured persons, injured third parties and beneficiaries etc.).</p> <p>c) The “complaints management policy” is made available to all relevant staff of the insurance intermediary through an adequate internal channel.</p>
<p>Guideline 2 - Complaints management function</p> <p>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.</p>	<p>Guideline 3 - Complaints management function</p> <p>15. Competent authorities should ensure that insurance intermediaries have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.</p>
<p>Guideline 3 – Registration</p> <p>12. Competent authorities should ensure that insurance undertakings register, internally, complaints in accordance with national timing requirements in an appropriate manner (for example, through a secure</p>	<p>Guideline 4 – Registration</p> <p>16. Competent authorities should ensure that insurance intermediaries register, internally, complaints in accordance with national timing requirements in an appropriate manner (for example, through a secure</p>

Insurance Undertakings	Insurance Intermediaries
electronic register).	electronic register).
<p>Guideline 4 - Reporting</p> <p>13. Competent authorities should ensure that insurance undertakings provide information on complaints and complaints-handling to the competent national authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant.</p>	<p>Guideline 5 - Reporting</p> <p>17. Competent authorities should ensure that insurance intermediaries are in a position to provide information on complaints and complaints-handling to the competent national authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant.</p>
<p>Guideline 5 - Internal follow-up of complaints-handling</p> <p>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:</p> <p>(i) Analysing the causes of individual complaints so as to identify root causes common to types of complaint;</p>	<p>Guideline 6 - Internal follow-up of complaints-handling</p> <p>18. Competent authorities should ensure that insurance intermediaries 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:</p> <p>(i) Analysing the causes of individual complaints so as to identify root causes common to types of complaint;</p>

Insurance Undertakings	Insurance Intermediaries
<p>(ii) Considering whether such root causes may also affect other processes or products, including those not directly complained of; and</p> <p>(iii) Correcting, where reasonable to do so, such root causes.</p>	<p>(ii) Considering whether such root causes may also affect other processes or products, including those not directly complained of; and</p> <p>(iii) Correcting, where reasonable to do so, such root causes.</p>
<p>Guideline 6 – Provision of information</p> <p>15. Competent authorities should ensure that insurance undertakings:</p> <p>a) On request or when acknowledging receipt of a complaint, provide written information regarding their complaints-handling process.</p> <p>b) Publish details of their complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or via the insurance undertaking’s website.</p> <p>c) Provide clear, accurate and up-to-date information about the complaints-handling process, which includes:</p>	<p>Guideline 7 – Provision of information</p> <p>19. Competent authorities should ensure that insurance intermediaries:</p> <p>a) On request or when acknowledging receipt of a complaint, provide written information regarding their complaints-handling process;</p> <p>b) Publish details of their complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or via the insurance intermediary’s website;</p> <p>c) Provide clear, accurate and up-to-date information about the complaints-handling process, which includes:</p>

Insurance Undertakings	Insurance Intermediaries
<p>(i) details of how to complain (e.g. 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);</p> <p>(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 alternative dispute resolution (ADR) scheme etc.).</p> <p>d) Keep the complainant informed about further handling of the complaint.</p>	<p>(iii) details of how to complain (e.g. 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);</p> <p>(iv) 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 alternative dispute resolution (ADR) scheme etc.); and</p> <p>d) Keep the complainant informed about further handling of the complaint.</p>
<p>Guideline 7 - Procedures for responding to complaints</p> <p>16. Competent authorities should ensure that insurance undertakings:</p> <p>a) Seek to gather and investigate all relevant evidence and information regarding the complaint.</p> <p>b) Communicate in plain language, which is clearly</p>	<p>Guideline 8 - Procedures for responding to complaints</p> <p>20. Competent authorities should ensure that insurance intermediaries:</p> <p>a) Seek to gather and investigate all relevant evidence and information regarding the complaint;</p> <p>b) Communicate in plain language, which is clearly</p>

Insurance Undertakings	Insurance Intermediaries
<p>understood.</p> <p>c) 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.</p> <p>d) When providing a final decision that does not fully satisfy the complainant's demand (or any final decision, where national rules require it), 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.</p>	<p>understood;</p> <p>c) 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 intermediary should inform the complainant about the causes of the delay and indicate when the insurance intermediary's investigation is likely to be completed; and</p> <p>d) When providing a final decision that does not fully satisfy the complainant's demand (or any final decision, where national rules require it), include a thorough explanation of the insurance intermediary's position on the complaint and set out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, ADR mechanism, national competent authorities, etc. Such decision should be provided in writing where national rules require it.</p>

Report on Best Practices by Insurance Undertakings in handling complaints vs. Report on Best Practices by Insurance Intermediaries in handling complaints

(Substantive differences in yellow)

Insurance Undertakings	Insurance Intermediaries
<p><u>Introduction</u></p> <p>The following Report contains a list of best practices for handling complaints by insurance undertakings. Their purpose is to contribute to “enhancing customer protection” as described in the underlying statutory objectives of EIOPA⁶⁷. They are based on Article 29(2), EIOPA Regulation⁶⁸ whereby EIOPA may “develop new practical instruments and convergence tools to promote common supervisory approaches and practices”.</p> <p>They provide examples of best practices and are complementary to the “Guidelines on Complaints-Handling by Insurance Undertakings” (EIOPA-BoS-12/069).</p> <p>These Best Practices are <u>not</u> legally binding on competent authorities or financial institutions as defined under Regulation 1094/2010 establishing EIOPA (“the EIOPA Regulation”) and are <u>not</u> subject to the “comply or</p>	<p><u>Introduction</u></p> <p>The following Report contains a list of best practices for handling complaints by insurance intermediaries. Their purpose is to contribute to “enhancing customer protection” as described in the underlying statutory objectives of EIOPA⁶⁹. They are based on Article 29(2), EIOPA Regulation⁷⁰ whereby EIOPA may “develop new practical instruments and convergence tools to promote common supervisory approaches and practices”.</p> <p>They provide examples of best practices and are complementary to the “Guidelines on Complaints-Handling by Insurance Intermediaries” (EIOPA-XXX-XX/XXX).</p> <p>These Best Practices are <u>not</u> legally binding on competent authorities or financial institutions as defined under the EIOPA Regulation and are <u>not</u> subject to the “comply or explain” mechanism provided for under Article 16 of the</p>

⁶⁷ Article 1(6)(f), EIOPA Regulation

⁶⁸ „ The Authority ([EIOPA] may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices”.

⁶⁹ Article 1(6)(f), Regulation 1094/2010 establishing EIOPA (“EIOPA Regulation”)

⁷⁰ „ The Authority ([EIOPA] may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices”.

Insurance Undertakings	Insurance Intermediaries
<p>explain" mechanism provided for under Article 16 of the EIOPA Regulation as their legal basis is Article 29(2).</p>	<p>EIOPA Regulation as their legal basis is Article 29(2). When applying the Guidelines, best efforts should be made to take into account the nature and size of insurance intermediaries in light of the principle of proportionality.</p>
	<p>The Guidelines are designed to provide a framework for insurance intermediaries when handling complaints about their activities. This raises questions for insurance intermediaries about what kinds of complaints are covered. These issues are addressed in paragraphs 10 and 11 of the introduction to the Guidelines and Guideline 1; however this document provides further explanation on how insurance intermediaries might address these issues.</p> <p><i>1) What should an insurance intermediary do if he/she receives a complaint about something other than his/her insurance activities (paragraphs 10(i) and 11 of the introduction to the Guidelines)?</i></p> <p>The Guidelines do not apply to that insurance intermediary as they are intended to apply to complaints concerning activities that are regulated by the "competent authorities" pursuant to Article 4(2), EIOPA Regulation. For example, an intermediary might receive a complaint about the sale of a non-insurance product e.g. a credit</p>

Insurance Undertakings	Insurance Intermediaries
	<p>product. Where an insurance intermediary receives a complaint about these kinds of activities, then it would be best practice to respond, where possible, explaining the insurance intermediary's position on the complaint.</p> <p>2) <i>What should an insurance intermediary do if someone complains to him/her about the activities of another entity (Guideline 1)?</i></p> <p>The Guidelines are designed to be followed by an insurance intermediary when it receives a complaint about its own activities, not those of another entity. For example, an insurance intermediary might receive a complaint about the activity of an insurance undertaking, where the insurance intermediary sold the policy, but had no involvement in the activity that forms the basis of the complaint. In such circumstances, providing the intermediary is not dealing with the complaint on behalf of another financial institution (see question 3 below), the insurance intermediary should inform the complainant and direct the complaint to the relevant insurance entity. The intermediary would not then be expected to comply with Guidelines 2 to 8. N.B. In this context, best practice for “informing and directing” would be to inform the complainant in writing</p>

Insurance Undertakings	Insurance Intermediaries
	<p>that you are not the correct person to deal with the complaint and to provide the complainant with the contact details of the relevant insurance entity.</p> <p>3) <i>What should an insurance intermediary consider if he/she is handling a complaint on behalf of another financial institution (paragraph 10(ii) of the introduction to the Guidelines)?</i></p> <p>It is possible the insurance intermediary might have an agreement with another financial institution under which he/she has agreed to handle complaints for that financial institution. In such situations, the Guidelines do not apply, but the insurance intermediary will be expected to comply with the relevant legal provisions (national or European) applicable to the financial institution he/she is acting for. An example of such legal provisions is the “EIOPA Guidelines on Complaints-Handling by Insurance Undertakings”: https://eiopa.europa.eu/publications/eiopa-guidelines/index.html</p>

Insurance Undertakings	Insurance Intermediaries
<p>Having regard to the “Guidelines on Complaints-Handling by Insurance Undertakings” (EIOPA-BoS-12/069), on internal systems and controls:</p> <p>Content of a “complaints management policy”</p> <p>It is considered best practice for an insurance undertaking’s “complaints management policy” to include processes for:</p> <ul style="list-style-type: none"> (i) Lodging a complaint with an insurance undertaking by any reasonable means (including complaints submitted by an authorised representative e.g. a family member or a solicitor) and confirmation that this is free of charge; (ii) Handling complaints received, including deadlines etc. (iii) The fair treatment of complainants; (iv) The proper treatment of a complainant’s information and personal data, according to the applicable legal framework; (v) Preventing, identifying and managing possible situations of conflicts of interest in complaints management; (vi) The prompt, equal, fair and efficient management of complaints, (vii) The adequate training of staff participating in complaints-handling within the insurance 	<p>Having regard to the “Guidelines on Complaints-Handling by Insurance Intermediaries” (EIOPA-XXX-XX/XXX), on internal systems and controls:</p> <p>Content of a “complaints management policy”</p> <p>Having regard to Guideline 2 of the aforementioned Guidelines, it is considered best practice for an insurance intermediary’s “complaints management policy” to include processes for:</p> <ul style="list-style-type: none"> (i) Lodging a complaint with an insurance intermediary by any reasonable means (including complaints submitted by an authorised representative e.g. a family member or a solicitor) and confirmation that this is free of charge; (ii) Handling complaints received, including deadlines etc. (iii) The fair treatment of complainants; (iv) The proper treatment of a complainant’s information and personal data, according to the applicable legal framework; (v) Preventing, identifying and managing possible situations of conflicts of interest in complaints management; (vii) The adequate training of staff, as appropriate, participating in complaints-handling within the

Insurance Undertakings	Insurance Intermediaries
<p>undertaking;</p> <p>(viii) Internal reporting, follow-up and monitoring of compliance with the “complaints management policy”.</p>	<p>insurance intermediary;</p> <p>(viii) Internal reporting, follow-up and monitoring of compliance with the “complaints management policy”.</p>
	<p><i>Endorsement of the complaints management policy</i></p> <p>Having regard to Guideline 2 of the aforementioned Guidelines, which requires that a complaints management policy should be defined and endorsed by the insurance intermediary’s senior management, it is recognised that “senior management” will mean different things depending on the size and structure of the intermediary. For example, in larger entities, it might be appropriate for the complaints policy to be endorsed by the Board or Compliance Committee. Smaller entities might choose to make a director e.g. the managing director or compliance director, responsible. It is understood that sole traders will not have the same formal governance processes as larger intermediaries and therefore, a formal endorsement process may not be necessary; however, it is still important that the complaints policy forms part of the formal processes followed by an individual intermediary.</p>

Insurance Undertakings	Insurance Intermediaries
<p>Organisation of the internal complaints management function</p> <p>Irrespective of the specific model that insurance undertakings have adopted for complaints- handling, it is considered best practice for insurance undertakings to:</p> <ul style="list-style-type: none"> (i) Appoint one or more senior manager(s) with overall regulatory responsibility for the complaints management function; (ii) Ensure the necessary internal flows of information and reporting lines for complaints management. (iii) Control the effective and efficient treatment of complaints 	<p>Organisation of the internal complaints management function</p> <p>Having regard to Guideline 3 of the aforementioned Guidelines, irrespective of the specific model that insurance intermediaries have adopted for complaints- handling, it is considered best practice for insurance intermediaries to:</p> <ul style="list-style-type: none"> (iii) Appoint one or more senior manager(s), as appropriate, with overall regulatory responsibility for the complaints management function or process; (iv) Ensure the necessary internal flows of information and reporting lines for complaints management, as appropriate; (iii) Control the effective and efficient treatment of complaints. <p>It is recognised that, in small intermediaries (especially sole traders), it might not be possible for an insurance intermediary to structure its internal organisation in such a way that it has a separate complaints management unit. However, insurance intermediaries should still ensure that they operate in a manner that ensures that complaints are handled fairly and impartially and they identify and mitigate conflicts of interest.</p>

Insurance Undertakings	Insurance Intermediaries
<p>Registration</p> <p>Without prejudice to applicable EU/national legislation on record keeping/data protection, it is considered best practice for:</p> <ul style="list-style-type: none"> (i) an insurance undertaking's register of complaints to contain all the necessary information on the complaints, including: <ul style="list-style-type: none"> (i) Subject of the complaint; (ii) Data on the complainant; (iii) Date of receiving and answering the complaint; (iv) Result/outcome of the complaints-handling procedure; (iv) Class of the insurance referred to. (ii) Documentation relating to the complaint to be kept and archived in a secure manner for a reasonable period of time based on the nature of the complaint and the insurance undertaking involved. (iii) Insurance undertakings to provide information to complainants regarding their complaint, where reasonably requested by complainants. 	<p>Registration</p> <p>Having regard to Guideline 4 of the aforementioned Guidelines, without prejudice to applicable EU/national legislation on record keeping/data protection, it is considered best practice for:</p> <ul style="list-style-type: none"> (iv) an insurance intermediary's register of complaints to contain all the necessary information on the complaints, including: <ul style="list-style-type: none"> (v) Subject of the complaint; (vi) Data on the complainant; (vii) Date of receiving and answering the complaint; (iv) Result/outcome of the complaints-handling procedure; (viii) Class of the insurance referred to. (v) Documentation relating to the complaint to be kept and archived in a secure manner for a reasonable period of time (to be determined by the competent authority of the home Member State) based on the nature of the complaint and the insurance intermediary involved. <p>Insurance intermediaries to provide information to complainants regarding their complaint, where reasonably requested by complainants.</p>

Insurance Undertakings	Insurance Intermediaries
<p>Reporting</p> <p>The relevant supervisory authorities should be informed of any changes in the identity and contact details of members of senior management involved in the complaints management function as referred to above.</p>	
<p>Internal follow-up of complaints-handling</p> <p>It is considered best practice for an insurance undertaking to have in place the following processes in order to comply with the proper internal follow-up of complaints:</p> <ul style="list-style-type: none"> (i) The collection of management information on the causes of complaints and the products and services complaints relate to; (ii) A process to identify the root causes of complaints and to prioritise dealing with the root causes of complaints; (iii) A process to consider whether the root causes identified may affect other processes or products; (iv) A process for deciding whether root causes discovered should be corrected and how this should be done; and (v) Regular reporting to senior personnel where information on recurring or systemic problems may 	<p>Internal follow-up of complaints-handling</p> <p>Having regard to Guideline 6 of the aforementioned Guidelines, it is considered best practice for an insurance intermediary to have in place the following processes in order to comply with the proper internal follow-up of complaints:</p> <ul style="list-style-type: none"> (i) The collection of management information on the causes of complaints and the products and services complaints relate to; (ii) A process to identify the root causes of complaints and to prioritise dealing with the root causes of complaints; (iii) A process to consider whether the root causes identified may affect other processes or products; (iv) A process for deciding whether root causes discovered should be corrected and how this should be done; and (vi) Regular reporting to senior management, as applicable,

Insurance Undertakings	Insurance Intermediaries
<p>be needed for them to play their part in identifying, measuring, managing and controlling risks of regulatory concern and keeping records of analysis and decisions taken by senior personnel in response to management information on root causes of complaints.</p>	<p>where information on recurring or systemic problems may be needed for them to play their part in identifying, measuring, managing and controlling risks of regulatory concern and keeping records of analysis and decisions taken by senior management in response to management information on root causes of complaints.</p>