

**Comments Template on EIOPA-CP 11/010a and EIOPA-CP 11/010b
 Consultation Paper on the Proposal for Guidelines on Complaints-Handling by Insurance
 Undertakings and Draft Report on Best Practices by Insurance Undertakings in handling
 complaints**

**Deadline
 31 January 2012
 12:00 CET**

Company name:	BIPAR	
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Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. <i>Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.</i>	Public
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Please follow the instructions for filling in the template:

- ⇒ Do **not** change the numbering in column "Reference", or any other formatting in the file.
- ⇒ Please fill in your comment in the relevant row. If you have **no comment** on a paragraph, keep the row **empty**. Please do not delete rows in the table.
- ⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below.
 - If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies.
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Please send the completed template to CP-010@eiopa.europa.eu, in MS Word Format, (our IT tool does not allow processing of any other formats).

The paragraph numbers and questions below correspond to document no. EIOPA-CP-11/010a.

There is an additional section at the end of the table for general comments on the draft Best Practices Report (document no. EIOPA-CP-11/010b).

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Reference	Comment	
General Comment	<p>BIPAR welcomes the opportunity provided by EIOPA to comment on EIOPA Proposal for guidelines on complaints handling by insurance undertakings and on EIOPA draft report on best practices by insurance undertakings in handling complaints.</p> <p>Effective complaints handling is critical for consumers. BIPAR therefore believes that it should be regarded as a high priority. BIPAR supports any initiative aimed at reinforcing consumer confidence and protection across the European Union.</p> <p>BIPAR understands that the draft EIOPA Guidelines and Best Practices Report on complaints-handling by insurance undertakings do not concern complaints addressed <u>to</u> insurance intermediaries but do cover complaints addressed to insurance undertakings <u>about</u> insurance intermediaries. BIPAR believes that it is very important that this is clarified in EIOPA final guidelines as these latter would not be adapted to insurance intermediaries at all. They would create important and heavy burdens that would neither be proportionate to the risks and size of insurance intermediaries - being mainly small and medium-sized enterprises - nor to the number of complaints received by intermediaries.</p> <p>This clarification is all the more important and necessary as in its draft consultation papers, EIOPA explained that national legal or regulatory requirements can go into further details than those guidelines as long as they do not contradict the EIOPA Guidelines. A clear definition of the scope of these guidelines is therefore crucial. BIPAR also believes that for legal security, more clarity from EIOPA around Comply or Explain rules would be helpful in this respect.</p> <p>BIPAR believes that limiting the scope of these guidelines to complaints addressed to insurance undertakings is coherent with the EU legislative development. It is indeed expected that the high-level provisions regarding complaints in the IMD (Articles 10 and 11) will be taken up in the draft legislative proposal for a revised IMD in Spring 2012. The MiFID II proposal might also have an impact on any provisions on complaints-handling in the IMD II.</p>	

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	<p>However we believe that it is important that other current EU legislatives initiatives are taken into consideration, in particular the Commission proposed Directive on ADRs and the proposed Regulation on on-line disputes. The purpose of EIOPA Guidelines is to fill in an existing regulatory gap at European level as regards insurance undertakings as the Life and Non-Life Directives (consolidated in SII) do not have specific provisions regarding complaints-handling. However it is to be noted that nearly all EU Member States have a requirement for an appointed individual to oversee complaints-handling in insurance undertakings. Information on complaints-handling procedures and parties involved is also compulsory in most EU Member States.</p>	
3.1.		
3.2.		
3.3.		
3.4.		
3.5.		
3.6.		
3.7.	<p>Definition of consumers EIOPA proposed definition of consumers is as follows: <i>“A person to whom an insurance contract is proposed or who has concluded a contract of insurance with an insurance undertaking or the beneficiary”.</i></p> <p>BIPAR wonders why EIOPA is not using the definition of consumers that is used in many EU Directives in insurance services. This could lead to some confusion. For sake of legal clarity, BIPAR would therefore suggest that the following definition of consumers is also used in EIOPA Guidelines. <i>“Consumer means any natural person who is acting for purpose which are outside his trade, business or profession”</i> (2002/65/EC Directive on the distance marketing of consumer financial services).</p>	
3.8.		

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3.9.		
3.10.		
3.11.	<p>Draft GUIDELINE 2 – Complaints management function</p> <p>Recital 31 of the Solvency II Directive states that “<i>A function is an administrative capacity to undertake particular governance tasks. <u>The identification of a particular function does not prevent the undertaking from freely deciding how to organise that function in practice save where otherwise specified in this Directive. This should not lead to unduly burdensome requirements because account should be taken of the nature, scale and complexity of the operations of the undertaking. It should therefore be possible for those functions to be staffed by own staff, to rely on advice from outside experts or to be outsourced to experts within the limits set by this Directive.</u></i>”</p> <p>BIPAR believes that it is important that this principle is not impeded and that insurance undertakings can freely organise their internal functions. Complaints handling is an activity that allows inter alia insurance undertakings to differentiate themselves from their competitors.</p>	
3.12.		
3.13.		
3.14.		
3.15.	<p>BIPAR agrees that it is important that consumers are accurately and efficiently informed by the insurers on their complaint-handling process. We believe that after a final decision has been reached, it is important that the consumer be informed by the insurance undertaking about the possibility to start an ADR.</p>	
3.16.		
3.17.	Comments are not being sought on this paragraph at this stage	
3.18.	Comments are not being sought on this paragraph at this stage	
3.19.		
Q1. – on Impact Assessment	EIOPA guidelines aim at harmonizing the practices of complaints-handling among insurance undertakings. It can therefore be expected that these guidelines may help to enhance the reputation of the insurance sector in this	

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	respect and the protection and trust of consumers at the same time.	
Q2.– on Impact Assessment		
Q3.– on Impact Assessment	<p>It is important that EIOPA guidelines are proportionate to the risks and the size of enterprises, and also to the number of complaints received by undertakings.</p> <p>The aim of EIOPA guidelines are to ensure that complaints are registered and in the failure of a dialogue, to make sure that the consumer is informed of other means of redress(ombudsman, ADR etc...). Each complaint is different. It is important that EIOPA guidelines do not lead to a too strict and rigid system.</p>	
Q4.– on Impact Assessment		
Best Practices Report Comments (EIOPA-CP-11/010b)		