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Guidelines on complaints-handling by insurance intermediaries

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Introduction

1. According to Article 16 of Regulation(EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC¹ 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 (“IMD”)², 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”³.
 - “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”⁴.
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 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.
5. Competent authorities should ensure a proportionate regime when applying these Guidelines that takes into account the nature and size of insurance intermediaries and whether the insurance intermediary takes up or pursues the activity of insurance mediation as a principal professional activity or on an ancillary basis. Proportionality is also illustrated in the Report on Best Practices by Insurance Intermediaries in handling complaints⁵ (“Best Practices Report”).

¹ OJ L 331 15.12.2010 p. 48

² OJ L 009 , 15/01/2003 P. 3 - 10

³ Recital 22

⁴ Article 10

⁵ EIOPA-BoS-13/171

6. 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.

7. 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 Regulation; or
- (ii) an insurance intermediary handles a complaint on behalf of another financial institution under the legal provisions applicable to that institution.

8. Where the Guidelines do not apply for the reasons set out in Paragraph 7(i), the intermediary should respond, where possible, explaining why he/she is not the right person to complain to.

9. It is important that these Guidelines are read in conjunction with the Best Practices Report, which illustrates the scope of the Guidelines and the process for insurance intermediaries handling complaints. This Best Practices Report also touches upon the complaints management policy and organisation of the internal complaints management function.

Guideline 1 – Ensuring the right institution deals with the complaint

10. Competent authorities should ensure that:
- a) Where a complaint is received by an insurance intermediary (for example, a tied insurance intermediary) for which another financial institution is responsible, and that insurance intermediary does not handle the complaint on behalf of that financial institution, the insurance intermediary should inform the complainant and direct the complaint to the relevant financial institution, where identifiable.
 - b) Where an insurance intermediary complies with Guideline 1, it shall not be required to handle the complaint under Guidelines 2 to 8.

Guideline 2 - Complaints management policy

11. 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

12. Competent authorities should ensure that insurance intermediaries have a complaints management function which enables complaints to be investigated fairly and, with the exception of insurance intermediaries which are sole traders, possible conflicts of interest to be identified and mitigated.

Guideline 4 – Registration

13. 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

14. 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

15. 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 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

16. 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

17. 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

18. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. 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.
19. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
20. Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the date of publication.
21. 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

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

