

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:	RPC, incorporating comments from EU members of TerraLex	Public
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.	Public
<p>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).</p>		
Reference	Comment	
General Comment on the Guidelines on Complaints-Handling by Insurance Undertakings (EIOPA-CP-11/010a)	<p style="text-align: center;"> RPC response to the EIOPA consultation on: </p> <p style="text-align: center;"> <i>a) The Proposal for Guidelines on Complaints-Handling by Insurance Undertakings (EIOPA- CP-11/010a);</i> </p>	
	Public	

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

**incorporating comments from EU
members of TerraLex[®]**

Introduction

Issues arising from the proposed guidelines

Availability of ADR and ombudsman schemes

Rights of third parties

Our approach

Conclusions

**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**

Ombudsman schemes for insurance disputes

Access to ombudsman by third parties

Submissions to EIOPA

Appendix 1: Member State comparison

Appendix 2: TerraLex[®]

Introduction

The creation of a single insurance market, promoting economic efficiency and market integration across the EU, requires a common framework that allows insurers to operate throughout the EU and to establish and provide services freely. The legal framework is also intended to protect customers, particularly individuals.

The Commission, Council and Parliament are supported through the work of the independent advisory body, the European Insurance and Occupational Pensions Authority (EIOPA) which has five main goals which facilitate the creation of the single insurance market:

- Better protecting consumers, rebuilding trust in the financial system.

**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**

- Ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial institutions.
- Greater harmonisation and coherent application of rules for financial institutions and markets across the EU.
- Strengthening oversight of cross-border groups.
- Promote coordinated EU supervisory response.

The European insurance industry is strongly supportive of these goals. A fragmented supervisory environment causes significant costs to insurers wishing to write business across the EU. Complexities in the single market drive up compliance costs, create geographical barriers to market entry, and reduce competition; all of which increases premiums for insureds and reduces shareholder value.

EIOPA has an important role to play in developing the single market in a way that benefits all participants. RPC, with the assistance of EU members of TerraLex[®], is pleased to contribute to its important work.

Issues arising from the proposed guidelines

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

**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**

RPC welcomes the publication of these two documents. In general the proposed guidelines contain sensible suggestions on complaints handling by insurance undertakings and are based on best practice.

Nonetheless, we feel it is important to highlight certain parts of the guidelines which make references to two areas of national law which exhibit major differences across the Member States.

Availability of ADR and ombudsman schemes

In the current guidelines repeated reference is made to the availability of ombudsman schemes and the obligation upon insurance undertakings to inform complainants of the existence of an ombudsman scheme (Guideline 3/3.12 - Registration; Guideline 4/3.14 - Reporting; Guideline 6/3.15 - Information to Consumers; Guideline 7/3.16 - Procedures for responding to complaints).

Despite this, page 6 of the Consultation Paper acknowledges that duties found in the 'Solvency II' Directive 2009/138/EC to inform non-life and life policyholders about the existence of a complaints body are only binding on insurance undertakings 'where appropriate'. It is clear from the wording of the Directive and from the Consultation Paper that such an ombudsman scheme does not exist in all Member States.

In fact, the European Commission's Directorate General for Health & Consumers (DG SANCO) carried out a study into Member States' alternative dispute resolution (ADR) schemes. The final report, entitled '*Study on the use of Alternative Dispute Resolution in the European Union*', was published on 16 October 2009. This found that there were substantial differences between states in terms of the number and structure of their schemes and the industries that were covered by them.

**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**

Rights of third parties

Under proposed Guideline 1/3.10, all insurance undertakings must put in place a 'complaints management policy' which has been endorsed by the firm's senior management. This policy will be applicable to 'consumers, insured persons, injured third parties and beneficiaries etc'.

Nonetheless, the Consultation Paper again acknowledges that this will not be the case for injured third parties in all Member States. On page 8 of the Consultation Paper it is noted that an injured third party may be a complainant only 'in some jurisdictions.'

Our approach

In order to highlight the inconsistencies that exist across the single market, RPC has sought detailed information on the availability of ombudsman schemes and complaints bodies and the rights of third parties to make complaints in Member States from EU members of the TerraLex[®] network. The information from a selection of Member States is presented in Appendix 1.

This comparative analysis follows the approach of DG SANCO in its report. The DG SANCO study is a valuable document and an important starting point for any analysis of ADR in the EU. This document is intended to supplement this study by providing information specifically on the existence and functioning of insurance ombudsman schemes across Member States and the access to those schemes by third parties.

We hope that this information will prove useful to EIOPA in taking its proposals forward.

Conclusions

These conclusions are drawn from the information provided by TerraLex[®] members from those Member States listed in Appendix 1.

Ombudsman schemes for insurance disputes

In general our findings show that while most Member States provide access to an ombudsman scheme or similar complaints body for insurance complaints which is compliant with Commission Recommendation (98/257/EC), some do not. Further there is a great divergence in terms of what these schemes can actually rule upon, the nature of these rulings, and how complainants can access the schemes. Our key conclusions are set out below:

- 1) While all complainants in the Member States covered by our study had access to an ombudsman scheme or similar 'complaints body', not all of these bodies cover insurance disputes.

Notably complainants in Austria, Greece and Slovakia are not able to have their insurance related complaints heard by a scheme which is able to make a decision which is binding upon insurers. In fact, in Slovakia the national supervisory authority is expressly excluded by law from adjudicating private disputes.

- 2) While there is an insurance scheme in the Czech Republic which is able to rule on whether an insurer has breached consumer protection rules it cannot make a decision as to monetary compensation.

- 3) None of the abovementioned schemes meet the standards of transparency, independence and

**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**

effectiveness set out in Commission Recommendation (98/257/EC). Nor do they meet the recommendations in the Recommendation that parties be permitted to have representation in the proceedings and not be denied access to other legal remedies.

- 4) In some Member States, notably Italy the range of insurance disputes and the availability of complaint bodies to complainants is dictated by agreements between industry and consumer associations. Thus coverage is not universal and may change over time. However, unlike many other jurisdictions, all insurance disputes must be mediated as mediation is a condition precedent to launching a legal suit.

- 5) The ombudsman schemes and complaints bodies vary greatly from Member State to Member State. For example, in Denmark, the UK, Finland, Ireland and Malta a single ombudsman/Consumer Complaints Manager/board/bureau will deal with the complaints through written correspondence from start to finish. In Estonia and Italy complainants may present their case orally. In the Czech Republic and Lithuania complaints are heard by the Central Bank. And in Malta and Romania the insurers will themselves organise either their own independent ombudsman, or their own complaints procedure which will be monitored externally.

- 6) From a practical point of view these schemes can present different challenges to consumers and insurers. In Luxembourg complainants must have exhausted all other settlement options with their insurer before referring a dispute to the mediator. In Denmark consumers must pay a DKK 200 (approximately €27) fee to refer a complaint, which might deter some low-income complainants. By contrast, in the UK insurers must pay a £500 (approximately €99) fee when a customer makes a complaint, irrespective of the outcome, which frequently leads to inflated settlement offers and increasing premiums for other customers. In Sweden disputes must be worth more than SEK 2,000 (approximately €227) before they can be heard. Finally, in Estonia the dispute resolution process is free, however, in relation to voluntary insurance, insurers must consent to the relevant complaints bodies hearing the complaint.

**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**

7) Some schemes are part of a much wider use of ADR by the Member State concerned. In Italy all insurance disputes must be mediated. While in Sweden, which has by far the most comprehensive ADR scheme of any Member State, all business-to-consumer disputes can be presented to the National Board for Consumer Disputes and the Consumer Agency may even pursue legal action on behalf of consumers in the courts.

Claims and access to ombudsman schemes by third parties

All Member States grant third parties injured in motor accidents the right to claim directly against insurers courtesy of rights created under the six European motor insurance Directives. However, not all Member States allow these third parties to make complaints to ombudsman schemes or similar complaints bodies. For instance, in the UK, third parties injured in motor insurance claims are explicitly excluded from being eligible complainants to the UK Financial Ombudsman Scheme. However, in Finland they may make a complaint to the Consumer Dispute Board and the Traffic Accident Board.

Further, there are some important differences between Member States in terms of the rights of other third parties to proceed directly against insurers:

- 1) In Lithuania all third parties, injured or otherwise, may make a complaint against an insurer. In Romania and Portugal the same is true for all injured third parties. Similarly, all third parties in Greece may make direct claims against insurers and complaints to a Consumer Protection Ombudsman, although this does not specifically adjudicate on insurance matters (see above). However, in Slovakia, Italy, Austria and Ireland, third parties, with the exception of those injured in motor accidents (and hunting accidents in Italy), cannot make either claims or complaints against insurers.
- 2) In the Czech Republic insurance contracts can be made that benefit third parties who are able to make complaints under the policy. However, in Denmark a complainant must show that the complaint relates

**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**

to his or her own policy.

- 3) In certain countries third parties may make claims directly against insurers in certain other specific instances. In Denmark third parties injured by dogs can proceed directly against insurers, as can third parties who suffer loss due to a professional with mandatory professional indemnity insurance. In Belgium injured third parties may proceed directly against insurers, whilst In Estonia third parties may proceed against insurers who have underwritten compulsory liability insurance policies. A similar position exists in Finland and in Scotland (although this is rarely applied in practice). In both Estonia and Italy third parties cannot make a direct claim against insurers, however, if an insured under a voluntary liability policy requests it, an insurer must make a direct payment to any injured third parties. In Finland, third parties with a security over property may proceed against insurers, as may successors in title to property for a defined period after the transfer of title. In Sweden, third parties with a security over property may claim, as may those who bear the risk during the conveyance of property. Further, if an insurer makes a payment to an insured to cover its liabilities to a third party and the insured fails to make payment to the third party, the insurer is liable to the same sum directly to the third party. Finally, in Italy third parties suffering injuries in relation to hunting may be able to claim against insurers. In addition motor vehicle passengers can bring claims against the insurers of the vehicle in which they were travelling.
- 4) In Denmark, Sweden and the UK third parties can claim directly against insurers if the insured has gone into insolvency or has been wound up. In the UK such third parties may still make a complaint to the ombudsman scheme. In Estonia, third parties gain priority over other creditors in insolvency proceedings of an insured who has been insured under a liability policy.

Submissions to EIOPA

Each Member State's schemes for dispute resolution, and the availability of such schemes to third parties,

**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**

has been created through the sovereign and democratic decision making processes of each Member State. The diversity of the systems reflect the different balances between procedural and substantive rights and speed and access to justice with which each nation in the EU has to this point been satisfied.

However, in the narrow sphere of insurance disputes, and the two issues we have addressed, the guidelines as they stand do not go far enough in harmonising the rules applicable to insurance undertakings. Our members believe that it is important that EIOPA engages with national regulatory authorities to explore, whilst respecting the principal of subsidiarity, ways in which the provision of access to ombudsman services can be made more consistent for consumers and insurance undertakings across the single market. Despite the compromise that this would entail, all consumers stand to gain either due to reduced premiums or through access to speedy resolution of disputes courtesy of ombudsman services.

Insurance undertakings operating in a common market should be under consistent obligations towards their customers. Not only does this provide better security for customers, it provides greater legal certainty for the industry, allows for a greater standardisation of complaints procedures and complaints handling processes and software, and reduces costs and, ultimately, premiums.

Consumers in a single market need to know when purchasing products from insurance undertakings established in other Member States that they have access to comparable dispute resolution schemes throughout that single market.

However, the guidelines should not seek to expand the rights of third parties. With the exception of those injured in motor accidents, third parties have different rights of action and of complaints in the various Member States. Giving third parties the right to sue or complain to insurers for losses arising under liability policies more generally would lead to insurers being exposed to much greater liabilities than they are at present. Liability insurance is a private, commercial agreement to protect an insured from exposures to its clients and the world at large. Although it provides an element of social security, potential beneficiaries in the world at large should not be granted rights of action against insurers except in the most

**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**

limited of circumstances or following full and thorough consultation. We are pleased to note that these guidelines do not propose any extension to such third party rights.

**APPENDIX 1: MEMBER STATE COMPARISON
 TABLE OF CONTENTS**

1.	AUSTRIA – FELLNER WRATZFELD & PARTNER	13
2.	BELGIUM – ELEGIS	14
3.	CZECH REPLULIC – PETERKA & PARTNERS	16
4.	DENMARK – BECH-BRUUN	17
5.	ESTONIA – GLIMSTEDT	20
6.	FINLAND – WASELIUS & WIST	25
7.	GREECE – M. & P. BERNITSAS LAW OFFICES	26
8.	HUNGARY – BURAI-KOVACS	29
9.	IRELAND – EUGENE F COLLINS	30
10.	ITALY – CARABBA & PARTNERS	32
11.	LITHUANIA – BERNOTAS & DOMINAS GILMSTEDT	40
12.	LUXEMBOURG – ARENDT & MEDERNACH	42
13.	MALTA – FENECH & FENECH	44
14.	NETHERLANDS – BOEKEL DE NERÉE N.V.	51
15.	PORTUGAL – CHAVES, ROQUETTE, MATOS, AZEVEDO & ASSOCIATES	53
16.	ROMANIA – MUSAT & ASOCIATII	55
17.	SLOVAKIA – PETERKA & PARTNERS	57
18.	SWEDEN – LINDAHL	59
19.	U.K./SCOTLAND – RPC/BRODIES	61

**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**

AUSTRIA – FELLNER WRATZFELD & PARTNER

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

No

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

-

A4. What are the scheme's basic details?

-

**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**

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

Third parties may bring a claim against an insurance undertaking underwriting automobile liability insurance that has covered the owner of a car which has caused their loss. Claims of third parties are not possible in other classes of insurance except where an insurance policy has been concluded in favour of a third party.

BELGIUM – ELEGIS

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

**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**

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

Complaints body: "De ombudsman van de Verzekeringen", Belliardstraat, 15-17, 1040 Brussels, Belgium

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

Article 86 Statute on Insurance Contracts provides a right for the injured party to proceed directly against underwriters.

**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**

CZECH REPLIC - PETERKA & PARTNERS

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

-

A4. What are the scheme's basic details?

The national 'complaints body' is the Czech National Bank (CNB). Nevertheless, its authority to deal with insurance complaints is limited. The CNB only supervises compliance with consumer protection rules.

Insurance contracts fall under the regime of private contracts between two private persons (insurer and insured) and the CNB is not authorized to intervene in the contractual relations of two private individuals. Therefore, it depends on each individual claim as to whether it falls under the authority of the CNB.

**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**

Generally, the process of dealing with a consumer complaint ends with the CNB affirming whether the complaint was legitimate. Where damages are claimed, consumers must apply to a competent court or arbitrator.

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

Third parties are not allowed to make a complaint to a 'complaints body'.
 Under Czech law an insurance contract may also be concluded for the benefit of a third party. In this case, the third party has rights under the insurance contract from the moment it agrees to it. The consent of the third party may also be granted subsequently when a claim for insurance benefits is raised.

DENMARK – BECH-BRUUN

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme

**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**

or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

In Denmark there are several complaints bodies handling financial matters, including the Complaint Board of Danish Securities and Brokering Companies, the Danish Complaint Board of Investment Funds, the Danish Complaint Board of Banking Services, the Danish Mortgage Credit Complaint Board, and the Insurance Complaints Board (ICB).

Among the founding organizations of the ICB, the Danish Consumer Council, and the industrial insurance organization 'Forsikring & Pension' there is a broad agreement that ICB meets the principles in Commission Recommendation (98/257/EC).

The ICB hears cases from consumers regarding insurance and pension matters. Disputes regarding non-consumer insurance contracts cannot be brought before the ICB.

In order to complain to the ICB the consumer must first complain to the insurance company. If the consumer is not satisfied with the insurance company's decision, a complain can be filed with the ICB by filling in a complaint form. The ICB can then

**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**

investigate the case. The fee for submitting a complaint is DKK 200. This fee will be returned to the consumer if the consumer is successful in the action or if the ICB cannot hear the case.

Both the preparation and the hearing of the case are in writing. If the ICB finds it necessary to examine witnesses the ICB will dismiss the case. The consumer may then bring an action before the courts.

Neither party is bound by the ICB's decision and the consumer has a right to bring an action before the courts for the settlement of the dispute.

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

The ICB has stated that a complaint must concern a policyholder's own insurance policy. It is not possible to complain about a decision made by a third party's insurer. This also applies even if a third party has a direct claim against the insurer.

In Denmark, however, injured third parties can bring a direct claim before the courts against an insurer in the following instances:

a) The provisions of the Sixth EU Motor Insurance Directive have been

**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**

implemented in Denmark and, therefore, parties injured in motor accidents can proceed directly against insurers to the extent they have a claim in tort against the relevant insured.

b) According to the Danish Dog Act the parties injured by a dog can proceed directly against insurers to the extent they have a claim in tort against the relevant insured.

c) Under Danish law governing mandatory professional liability insurance, injured third parties may often have a direct claim against the insurer. This applies for accountants, estate agents, lawyers, insurance brokers, etc.

d) According to the Danish Insurance Contracts Act, injured parties can bring a direct claim before the courts against an insurer if:

- i) an injured third party has a claim against an insured, and the insured is under insolvency proceedings, or
- ii) when the liability is established and the size of the damage is determined. This can either be because the insured has admitted the claim or because the party injured has obtained judgement against the insured.

ESTONIA – GLIMSTEDT

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

**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**

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

There are three complaints bodies that comply with the Commission Recommendation (98/257/EC): the Insurance Dispute Committee (IDC), the Insurance Conciliation Body (ICB) and the Consumer Complaint Committee (CCC). The IDC was founded by the Estonian Traffic Insurance Fund and the ICB by the Estonian Insurance Association. The CCC operates under the Estonian Consumer Protection Board, which was established by the Ministry of Economic Affairs and Communications.

Referring a complaint is free of charge for every complaints body. However, if the dispute is not related to motor insurance, then the procedural expenses arising out of IDC proceedings must be paid by the losing party (which may be the complainant). The complainant must choose between the three complaints bodies - it is not possible to file a claim with all of them at the same time. All have competence concerning voluntary insurance services, e.g. life insurance. But only the IDC and the ICB have the competence to settle disputes concerning compulsory insurance services, e.g. motor third party liability insurance and compulsory liability insurance. In order for the IDC and the ICB to process a

**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**

complaint, the relevant insurance undertaking needs to give its written consent. However, most insurance undertakings have given prior consent for disputes to be processed by the ICB. When it comes to the IDC, consent is not necessary for the hearing of a claim filed against an insurance undertaking concerning compulsory insurance, however it is necessary to file a complaint arising out of voluntary insurance.

A complaint filed with the IDC shall be heard by a collegiate body consisting of three members. The complainant and the insurance undertaking shall both select one committee member from a list of committee members and the two committee members selected shall select the chairman of the committee from among the members of the board of the committee. The committee shall consider the complaint by way of an oral hearing. The chairman of the committee shall prepare a reasoned decision not later than 10 days after the review of the complaint has been completed. The decision shall be made by way of voting.

The decision of the committee enters into force on the 10th day after the delivery of the decision to the parties but not later than on the thirtieth day after publication of the decision. The decision does not enter into force if, within such term, a party files a claim with a court against the other party in the same matter. If the decision enters into force, it is legally binding on both parties and legally enforceable.

However, another possible way to settle a dispute is to file a complaint with the ICB. The mediator (a single individual) for the process is chosen by the consumer from a certified mediators list. The whole of the ICB's process is aimed at parties willing to reach a consensual agreement. If parties are unwilling to do so within a set period (by the time of the mediation meeting which is held as soon as possible but no later than one month from the filing of the claim) the mediator may present a settlement proposal which must be accepted by the parties, in order to conclude a settlement agreement. The settlement agreement concluded by parties during the ICB process is not binding on the parties.

**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**

However, the parties may consent to the agreement being declared legally enforceable by the courts.

The consent of an insurance undertaking is not a precondition to the filing of a complaint with the CCC. However, the CCC will not settle a dispute if the claim arises from death, physical injury or damage to health nor shall it settle disputes for which the settlement procedure is prescribed by other legislation. Furthermore, the CCC is competent to settle disputes only if the parties have not been able to settle the disputes by agreement and if the value of the disputed goods or services is at least €20. In order to hear a complaint, the Director General of the Consumer Protection Board shall approve the composition of the committee, consisting of at least three members. The committee shall be comprised of an equal number of representatives of insurance undertakings and representatives of consumers. A complaint submitted to the committee shall be heard at a committee session within one month of the date following the date on which the complaint is forwarded to the committee. The committee shall hear the complaint by way of an oral hearing. The committee shall make a decision within five working days from the date of hearing a complaint. Decisions shall be made by majority vote. However, the decision is not in itself legally enforceable and therefore is not binding. If a party does not consent to the decision of the committee or fails to comply with the decision, the parties have the right to file an action with the county court for the same dispute to be reheard.

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

**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**

Yes

B2. What are the rights of these third parties?

The IDC and the ICB process complaints in all insurance related disputes against insurance undertakings. If a person has a claim against an insurance undertaking that is related to an insurance contract, then that person has the right to file a complaint with the IDC or the ICB. Persons with such a claim may include the policyholder, the insured, the beneficiary and the injured third party.

The specific claims and rights of third parties derive from different legislation. For example, third parties injured in motor accidents have the right to proceed directly against insurers.

Also, in case of compulsory liability insurance, the injured third party has the right to claim damages from the insurance undertaking. In that case the insurance undertaking is unable to refuse to satisfy the claim of an injured party on the grounds that the insurer has been released from its liability to the insured in part or in full.

Furthermore, upon the bankruptcy of an insured, a third party has the exclusive right in the insured's bankruptcy proceedings to satisfy its claim against the insured at the expense of a claim for compensation against the insurance undertaking before the other creditors of the insured in its bankruptcy.

However, the Consumer Complaint Committee only settles disputes between contracting parties and does not accept complaints from injured third parties.

**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**

FINLAND – WASELIUS & WIST

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

The main complaint bodies are: i) the Insurance Board (acting under the Financial Ombudsman Bureau); and ii) the Consumer Disputes Board, which both provide recommendations (generally well abided by the parties and followed by the courts) for resolutions in disputes based on non-mandatory insurance policies. The Consumer Disputes Board handles only complaints concerning insurance policies purchased by consumers and liability insurance complaints made by consumers. Both are members of FIN-NET.

**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**

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

Injured third parties in liability insurance; parties having a security over damaged property; successors in title to property within a certain (short) period from the purchase date; and injured third parties in statutory motor liability insurance, among others, may bring a claim against an insurance undertaking. Instead of bringing a civil claim in court, a complaint may be made to the Insurance Board – and in case of a consumer and liability insurance, also to the Consumer Disputes Board. For disputes related to the statutory motor liability insurance, there is a special body called the Traffic Accident Board.

GREECE – M. & P. BERNITSAS LAW OFFICES

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

**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**

Yes

A2. Does the scheme cover insurance?

No

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

No

A4. What are the scheme's basic details?

In Greece, there is no institutional body acting as an 'ombudsman/mediator' or as a 'similar complaints body' between insurance companies and insured persons – at least in the manner described in Commission Recommendation 98/257/EC.

However, in Greece, a similar role can be undertaken by the Consumer Protection Ombudsman, an independent authority with general competence to act as a consultative and out of court body for the amicable resolution of disputes arising from contracts with consumers. The involvement of the Consumer Protection Ombudsman does not have a binding effect on the parties to the dispute.

It is important to note that an out of court amicable resolution of insurance disputes is possible only with regard to motor vehicle accidents in the context of the mechanism provided under Article 14 para. 1 of Law 2836/2000. This mechanism, which is based on agreements executed at an insurance company level, entitles third parties – owners of vehicles involved in such accidents – to be compensated for material damages directly

**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**

from the insurance company with whom the insured has their policy on a strict liability basis. This mechanism is subject to pre-conditions relating principally to the maximum level of compensation; the correctness and legal compliance of the amicable settlement process followed by the parties; and the expert's report carried out in order for the extent of damages to be determined.

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

Apart from bringing their claims against an insurance undertaking directly in Court, third parties (injured or otherwise) are entitled to make a complaint before the Consumer Protection Ombudsman, as described in section A4.

An out of court amicable resolution may be also possible in disputes for material damages originating from motor vehicle accidents, as described in the third paragraph of section A4.

**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**

HUNGARY – BURAI-KOVACS

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

-

A2. Does the scheme cover insurance?

-

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

-

A4. What are the scheme's basic details?

PSZAF (State Supervision of Financial Institutions) deals with complaints arising out of contracts of insurance. This body acts as a watchdog over financial and insurance institutions (including insurance companies and insurance brokers, etc).

Until recently, the Consumer Protection Authority dealt with consumer complaints against insurance companies. However, these duties were taken over by PSZAF.

Decisions made by PSZAF may be challenged before the Administrative Court.

**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**

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

-

B2. What are the rights of these third parties?

-

IRELAND – EUGENE F COLLINS

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

**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**

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

The Financial Services Ombudsman Bureau was established under the Central Bank and Financial Services Authority of Ireland Act, 2004 and allows consumers and micro enterprises to bring claims up to €250,000 against financial service providers (that includes insurance companies).

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

No

B2. What are the rights of these third parties?

Only “eligible consumers” as defined under Section 57 BA of the Central Bank Act 1942 (as inserted by the Central Bank and Financial Services Authority of Ireland Act, 2004) can bring a complaint. Consumer complaints are also addressed under the Consumer

**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**

Protection Code 2012.

ITALY – CARABBA & PARTNERS

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

Joint Conciliation

With reference to insurance matters, the ADR scheme used in Italy is the joint conciliation

**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**

(conciliazione paritetica) which is a form of conciliation not regulated by the State, but based on agreements between consumer associations and some major undertakings. Such agreements (known as Protocols and Implementing Regulations) must be notified to the regulatory authorities and are subject to an initial trial period. They also can be adhered to by those consumer associations which were not involved from the outset.

The main features of the standard procedure for joint conciliation are as follows:

In the Regulations, the business and the consumer associations define what type of dispute they intend to resolve by means of joint conciliation. In fact, they can limit the area of competence of such a procedure to certain types of disputes or services or with regard to their economic value. The Regulations also govern how the procedure works – determining, in particular, the overall duration of the procedure, from the time of the referral of a request to the conclusion of the procedure.

Before requesting joint conciliation, customers must submit a claim to the business. In the absence of a reply within a determined period of time, or if the reply is deemed to be unsatisfactory, customers may submit a request for conciliation. The form for submitting such a request is attached to the Regulations. Customers are properly informed about all aspects of the procedure, particularly of the fact that they may refuse to participate in or withdraw from the conciliation procedure at any time.

In order to ensure the independence of the conciliation board, this body is characterised by an equal number of representatives from the business and of consumers. Members of the joint board are designated respectively by the business and consumer associations from a list of conciliators and are not required to be lawyers, but they must have attended a suitable training course and periodic refresher courses.

**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**

During the procedure, the consumer, if he/she so requests, may be heard by the board, and the meeting and all its findings are confidential. On the basis of the information collected from the parties, the board drafts a report containing a possible solution which it then submits to the customer for his/her approval. If he/she accepts, the report acts as a compromise agreement between the parties. If the solution proposed by the conciliation board is rejected, the board drafts a record of failure to reach a settlement, leaving the parties free to continue the dispute before the competent court.

All necessary organisational duties for the pursuit of the procedure are assigned to a technical secretariat, which also keeps an updated list of conciliators, and checks that they have attended special training courses as set down in the relevant protocol.

Mediation

In 2009, the Italian Parliament approved a law (Law N° 69/2009) that aims to increase the use of mediation in Italy. Legislative Decree N°28/2010 - approved to implement the requirements of Law N° 69/2009 - introduced rules providing that mediation is a condition precedent to bringing a suit in court in many matters, including insurance contracts. Therefore, in insurance disputes a conciliation attempt is mandatory.

The legislators preferred not to set down a formal procedure for mediation. In fact, the new rules only state that procedural rules for mediation be defined by the mediation provider organisation and must ensure the confidentiality of the procedure and the appointed mediator's impartiality and fitness to appropriately conduct the mediation.

To this end, article 10 of Legislative Decree N°28/2010 prohibits information that is collected during the procedure from being used in court, and prevents the mediator and anyone else who works within the mediation provider organisation from being called to

**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**

testify. Moreover, in order to insure the independence of mediators, under article 14 of Legislative Decree N°28/2010, the mediators must make a declaration of impartiality and must immediately disclose anything that happens during the proceeding that may lead to prejudice.

The main features of such ADR scheme are as follows:

Mediation can be handled only by public or private organizations (created by members of the Bar Association, the Chamber of Commerce or other professional associations) which are registered and monitored by the Ministry of Justice.

Lawyers have a duty to inform their clients, in writing, about the mediation option and the financial incentives involved. Should the lawyer fail to do so, the power of attorney may be voided.

The procedure starts by submitting a request to the mediation body, which then appoints a mediator. The mediation may only be conducted by mediators who are listed in the Ministry of Justice Register and have attended and successfully completed a mediation training course provided by training institutions accredited by the same Ministry. The mediation proceeding must be completed within four months of the submission of the request.

The mediator has a duty to help the parties reach an agreement. Should the parties fail to reach an agreement by the end of proceedings, they may request a settlement proposal from the mediator or the mediator can make a written proposal to submit them. The parties may accept or refuse the mediator's proposal, but refusing without just cause produces cost consequences when a court comes to allocate of costs at trial. In fact, if action is brought before a civil court after the failed mediation, and the subsequent judicial sentence

**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**

corresponds with the mediator's proposal, the judge will exclude recovery of costs incurred by the winning party that refused the proposal.

If a settlement agreement is reached, the text of the agreement is signed by the parties and the mediator and, at the direction of either party, it can be certified for legality by a judge in order to become enforceable.

Legal assistance is not compulsory in mediation proceedings. The expenses of such a process are quite low, and the fees and calculation criteria are determined by ministerial decrees. Legal aid is also granted for those parties who are entitled to obtain legal aid before Courts.

ISVAP Complaints-Handling Procedure

The ISVAP Complaints-Handling Procedure is an ADR procedure regulated by ISVAP Regulation no. 24 of 19 May 2008. Pursuant to the Regulation, insurance users (i.e. insured/policy holders and/or injured parties) and consumer associations, or in general other organizations having a legitimate interest in protecting consumers, can file complaints with ISVAP (which is the Italian regulatory body with authority over the insurance sector) in the following cases:

- a) non-observance by insurance and reinsurance undertakings, insurance intermediaries and loss-adjusters, of the provisions of the Insurance Code, of the relevant implementing rules and of the rules on the distance marketing of insurance products.
- b) cross-border disputes regarding financial services for which the activation of the FINNET is sought.

**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**

The main features of this procedure are as follows:

Before addressing a complaint to ISVAP, the insurance users must first file their complaints with the insurance undertaking, which must have a specific function for the handling of complaints. If the undertaking fails to reply by the established deadline (i.e. 45 days from receipt of the complaint) or if the user deems that the reply is unsatisfactory, it is possible to apply to ISVAP. Non-compliance with the deadline is subject to a pecuniary administrative sanction by ISVAP.

The complaint must contain essential information such as the name, surname and address of the complainant; the name of the undertaking whose behaviour is the subject of the complaint; a brief description of the reason for the complaint; and any document useful to provide a detailed description of the facts.

After receiving the complaint, ISVAP carries out a preliminary enquiry and informs the complainant of the outcome of such enquiry within 120 days of receiving the complaint.

If the Authority discovers that there has been a breach of the rules by the supervised subjects, it starts a sanctioning procedure (of an administrative, pecuniary or disciplinary nature), and gives information on its outcome in its bulletin and internet site.

It must be emphasized that such procedure is not aimed at helping the parties to reach a settlement agreement or to issue a decision upholding or rejecting the complaint.

**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**

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

As described in section A4, third parties may file complaints with ISVAP in the cases determined by article 4 of ISVAP Regulation no. 24 of 19 May 2008.

As far as other rights of third parties are concerned, in Italy the general rule is that third parties cannot bring a claim against an insurance undertaking. In fact, pursuant to article 1917 of the Italian Civil Code “in liability insurance the insurer is bound to indemnify the insured for the damages which the latter must pay to a third person because of events occurring during the insurance period and resulting in the liability referred to in the insurance contract. The insurer after giving advance notice to the insured, has the power to pay directly to the injured third person the compensation due, and is bound to make such payment directly if the insured demands it”. Therefore, in general the payment of the compensation due is made by the insurance undertakings directly to the third party only on the basis of the insured’s consent.

There are only two exceptions to this rule which regard motor accidents and the hunting law. In particular:

Motor accidents

In such cases injured parties have a direct right of action for damages against the insurance undertaking of the party civilly liable pursuant to article 144 of the Italian Insurance Code which states: “The injured party in an accident caused by a vehicle or craft

**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**

which is subject to compulsory insurance shall have a direct right of action for damages against the insurance undertaking of the party civilly liable, within the amounts insured". Moreover, a special provisions is set down for passengers by article 141 of the Italian Code of Private Insurance which states: "Except for accidents caused by unforeseeable circumstances, the loss or injury suffered by passengers shall be paid by the insurance undertaking of the vehicle in which they were being carried at the time of the accident up to the minimum amount of cover established by law,, regardless of which driver of the vehicles involved in the accident is liable... A direct right of action for damages may be exercised against the insurer of the vehicle in which the injured party was being carried at the time of the accident under the terms of article 145".

In addition to the above, it must be emphasised that under the Italian Insurance Code a national guarantee fund, known as "Fondo di garanzia per le vittime della strada", pays compensation for damages caused by motor vehicles and craft when:

- a) the accident has been caused by an unidentified vehicle or craft;
- b) the vehicle or craft is not insured;
- c) the vehicle or craft is insured with an undertaking pursuing business in the territory of the Italian Republic by way of establishment or of free provision of services, which has been placed under compulsory winding up at the time of the accident or afterwards;
- d) the vehicle has been used against the will of the owner, usufructuary, buyer under reservation of title or leasee of an operating or financial leasing;
- d-bis) the vehicle has been dispatched to the territory of the Italian Republic from a State referred to in article 1 (1, bbb) of the Italian Insurance Code, and in the period referred to in article 1 (1, fff, 4-bis) of the Italian Insurance Code it was involved in an accident while being uninsured;

**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**

d-ter) the accident has been caused by a foreign vehicle bearing a registration plate which does not correspond or no longer corresponds to the vehicle.

In the above mentioned cases, the settlement of the relevant claims must be arranged by an undertaking appointed by ISVAP in accordance with the criteria established by the Minister of Production Activities, and the injured party is entitled to a direct right of action against such an undertaking.

Hunting law

Pursuant to article 12, paragraph 10, of the Italian Law N° 157/1992: "in the event of an accident the injured party shall have a direct right of action for damages against the insurance undertaking of the party who caused such damages

LITHUANIA – BERNOTAS & DOMINAS GILMSTEDT

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

**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**

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

As of 1st January 2012 the Bank of Lithuania (BL) is the complaints body for insurance claims (not yet notified to the EC). The complainants can only be consumers that entered into the insurance contract in their personal, family or household interests. The complaint first has to be lodged against the insurance undertaking. If the decision is not satisfactory or the undertaking fails to resolve the issue, the complaint is then eligible for a review at BL. The decision of BL is of a recommendatory nature and cannot be appealed but this does not preclude the complainant from initiating court proceedings regarding the insurance claim.

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

According to the ADR procedure laid down in the Law on the Bank of Lithuania, third parties (injured or otherwise) have the right to lodge complaints against the insurance

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

undertaking, before the Bank of Lithuania and in court.

LUXEMBOURG – ARENDT & MEDERNACH

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

-

A4. What are the scheme's basic details?

The mediation service in Luxembourg in relation to insurance disputes is run jointly by the Association of Luxembourg Insurance Companies (*Association des companies*

**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**

d'assurance du Grand-Duché de Luxembourg, "ACA") and the Luxembourg Consumers' Union (Union luxembourgeoise des consommateurs, "ULC").

Requests must be made in writing in one of Luxembourg's official languages (Luxembourgish, French or German).

All possibilities for direct settlement with the insurance establishment must have been exhausted before the matter can be referred to the mediator.

The services are open to natural persons resident in Luxembourg for matters concerning any type of private insurance and for natural persons non-residing in Luxembourg in respect of private insurance contracts (excluding life insurance) held with insurance companies established in Luxembourg.

The mediation service endeavors to reach a settlement. If this proves impossible, a reasoned opinion is issued. The opinion is not binding on the parties.

The Luxembourg insurance supervisory authority (*Commissariat aux Assurances "CAA"*) is also entrusted with reviewing complaints received from policyholders or other interested persons against any professional subject to the Luxembourg law on the insurance sector.

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

**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**

Yes

B2. What are the rights of these third parties?

For insurance contracts falling under the law of 27 July 1997 on the insurance contract, as amended (the “Insurance Contract Law”) third parties have a direct legal action against the liability insurer of the party who caused the damage or loss. (Article 89 of the Insurance Contract Law). They can further address their complaints to the CAA as well as the ACA/ULC mediator, as stated above.

MALTA – FENECH & FENECH

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

**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**

Yes

A4. What are the scheme's basic details?

The Consumer Complaints Manager (CCM), has been set up under the terms of Article 20 of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta) (MFSA Act), as the body responsible for investigating complaints from private consumers arising out of, or in connection with, any financial services transaction. The term 'financial services' is defined in the MFSA Act to include, amongst others, the business of insurance and the activities of insurance intermediaries. The CCM provides consumers with a free service for investigating complaints against insurance companies or insurance intermediaries.

The detailed procedures that are to be followed internally by the CCM and the Malta Financial Services Authority (MFSA) for the handling of consumer complaints are set out in the 'Internal Procedures for the Malta Financial Services Authority for the proper implementation of section 20 of the Malta Financial Services Authority Act, Cap.330', published in May 2003 and last revised in May 2010 ('the CCM Guidelines').

At any time a complaint is being investigated, the CCM aims to reach an amicable settlement between the consumer and the insurance entity concerned. The CCM considers each case impartially and on its merits after discussing the complaint with all parties concerned, including the consumer (CCM Guideline 2.2).

The CCM Guidelines also provide that the MFSA (and therefore also the CCM), is committed to following the principles of independence, transparency, an adversarial

**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**

approach, effectiveness, legality, liberty and representation as enunciated in Commission Recommendation 98/257/EC for the handling of consumer complaints (CCM Guideline 2.4).

The procedure for investigating a complaint made by a consumer is divided into four stages: i) the initial stage; ii) the investigative stage; iii) the disclosure of information stage; and iv) the final stage.

During the initial stage, a complaint is received in writing according to a complaint form that may be lodged online in a secure environment. Upon receipt of the complaint form, the CCM will verify whether the complaint falls within the CCM's area of responsibility. If the CCM considers that it does not fall within his area of responsibility, the CCM must give the complainant an opportunity to make representations and he must give reasons to the complainant for his decision. If the CCM considers that the insurance entity concerned was not given a reasonable opportunity to consider the complaint, the CCM may refer the complaint to the insurance entity. The CCM will only proceed to consider or investigate the complaint if it has first been submitted to the insurance entity concerned which is the subject of the complaint, and the insurance entity would have given the complainant a final response in writing or has avoided or unreasonably delayed giving such a response (CCM Guideline 4.1).

During the investigative stage, where the CCM considers the complaint to fall within his area of responsibility, and that there is a reasonable prospect of resolving the complaint amicably, the CCM will attempt to negotiate a settlement between the parties. If there is no such prospect of settlement, the CCM will proceed with an investigation and will give both parties the opportunity to make representations (CCM Guideline 4.2).

During the disclosure of information stage, the CCM is required, by the terms of Article

**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**

20(3) MFSA Act, to communicate to the complainant information concerning any matter which may have come to his cognisance in the course of, or as a result of, the investigation. As part of his investigations, the CCM may contact the insurance entity concerned and any other person or entity that may have information or copies of documentation relevant to the complaint. The CCM may request that the complainant provide a declaration to the MFSA to the effect that he does not object to the CCM requesting such information or documentation relating to the complainant's case. Any information held by the CCM in relation to an investigation is treated in confidence except as required by law or under any agreement enabling disclosure as agreed by all the parties concerned (CCM Guideline 4.3).

At the final stage, upon concluding the investigation, the CCM will inform the parties of the outcome of the investigation. There may be cases where the CCM may need to refer the matter to the Supervisory Council established under the terms of Article 10 of the MFSA Act for its consideration, detailing the course of the investigation, an assessment of the situation and recommended course of action. The Supervisory Council will then instruct the CCM to inform the parties with its recommendation. The CCM will provide a recommendation to the insurance undertaking on how the latter may amend the situation for the complainant.

The insurance undertaking or a consumer may or may not accept the recommendation of the CCM and the CCM cannot enforce a recommendation on either party (CCM Guideline 4.4-4.6). The Supervisory Council may sanction an insurance licence holder if it finds that it has violated any rules issued by the MFSA. However, the CCM will not divulge the MFSA's decision in this respect.

Recourse to the CCM does not have the effect of depriving the consumer or insurance undertaking of the right to bring an action before the Courts or any other entity established

**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**

at law for the settlement of the complaint, should either party refuse to accept the CCM's recommendation (CCM Guideline 4.6).

The CCM is also required in terms of the CCM Guidelines to inform a complainant whether his case is closed or not. In its communication, the CCM will advise the consumer of his right to seek independent professional advice especially if he is not satisfied with the outcome of the complaint (CCM Guideline 4.7).

The MFSA encourages insurance entities to resolve complaints without the CCM's involvement. The MFSA, in its 'Note to Financial Services Providers for the proper implementation of Section 20 of the Malta Financial Services Authority Act, Cap. 330' (NFSP), (published in May 2003; last revised in May 2010) requires insurance entities to inform consumers making a complaint to them, of the fact that he may lodge a complaint with the CCM (NFSP Note 4).

While the consumers making a complaint will not usually require professional, legal or financial help to bring a complaint to the CCM, they are not precluded from being assisted by such person in making representations on their complaint (NFSP Note 7.5).

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

**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**

B2. What are the rights of these third parties?

Maltese law protects the rights of third parties in one of two ways: (i) by allowing them, in the case of motor vehicle risk, a direct course of action against the insurer; or (ii) by referring third party claimants to the Protection and Compensation Fund Management Committee (“the Committee”).

Direct Course of Action:

Under the terms of Section 9A(1) of the Motor Vehicles Insurance (Third-Party Risks) Ordinance (Chapter 104 of the Laws of Malta) (“the Ordinance”), an injured party who is (i) resident in Malta or a designated state (i.e., a state listed as such by Regulations made by the Minister responsible for Transport); and (ii) entitled to compensation in respect of any loss or injury resulting from an accident caused by the use of a motor vehicle which is insured by a licensed insurer and normally based in Malta or the territory of a designated State, enjoys a direct course of action against the licensed insurer in Malta.

This direct right of action is allowed where the accident occurred in Malta or a designated State; or the accident occurred in a third country whose foreign bureau has joined the green card system.

Moreover, under the terms of Section 9A(2) of the Ordinance, an injured party resident in Malta and entitled to compensation in respect of any loss or injury resulting from an accident caused by the use of a motor vehicle which is insured and normally based in the territory of a designated State, has a direct right of

action against the insurance undertaking issuing the insurance policy and is entitled to exercise his right of action against the insurance undertaking’s claims representative in Malta if the accident occurred in a designated State; or in a third country whose foreign bureau has joined the green card system.

The Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) further

**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**

requires the third party, when issuing a judicial letter under the terms of Article 166A of the said Code, for a claim arising under the Ordinance, on pain of nullity, to notify the insurer with said judicial letter and which shall have the same rights of action as though it were the insured.

Referral to the Committee:

In terms of the 'Protection and Compensation Fund Regulations' (S.L. 403.13) ("PCF Regulations"), the Protection and Compensation Fund ("the Fund") has been set up, for use in one of two situations: (i) for a claim in respect of risks situated in Malta and of commitments where Malta is the country of commitment against an insurer, remaining unpaid by reason of insolvency of such insurer; and (ii) for compensation to victims of road traffic accidents in circumstances prescribed by the PCF Regulations.

In the first situation, whenever an insurer is unable to meet its obligations, the Committee may, in respect of such obligations, make payments out of the Fund to a qualifying person. A person is a qualifying person in terms of the PCF Regulations if, inter alia, he is a person to whom the insolvent insurer is liable to pay any sum or other consideration in respect of the insured's legal liability to such person under the insurance policy (Regulation 16).

In the second situation, compensation to victims of road traffic accidents will arise in three scenarios:

First, in terms of Regulation 25, where a judgment in respect of a civil liability which is required to be covered by a policy of insurance is obtained against any person/s and either at the time of the accident there is not in force a policy of insurance or such policy is ineffective, and such liability is not satisfied in full within 28 days from the date of possible enforcement, then, if there is no insurer concerned, the Fund shall make payments to the person in whose favour such judgment is delivered.

Second, in terms of Regulation 26, payment of compensation in respect of civil liability to

**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**

any person (other than compensation falling within Regulation 25) may be made out of the Fund if the following conditions concur: (a) the applicant is unable to trace any person responsible for the civil liability; (b) the circumstances are such that, on a balance of probabilities, the unidentified person would be liable to pay damages to the applicant; (c) the liability is one which is required to be covered by insurance or security under compulsory insurance legislation; (d) the vehicle was not used as a weapon; and (e) the application for compensation is made in writing within 2 years from the date of the occurrence of the accident giving rise to the civil liability.

Third, in terms of Regulation 27, in the case of an accident arising from the use of a stolen vehicle or vehicle obtained by violence and giving rise to civil liability.

NETHERLANDS – BOEKEL DE NERÉE N.V.

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

**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**

Yes

A4. What are the scheme's basic details?

Details can be found on the website of the complaints body: www.kifid.nl

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

According to Section 7:954 Dutch Civil Code, a third party may, in specific circumstances, require from the liability insurer that compensation is directly paid to him.

**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**

PORTUGAL – CHAVES, ROQUETTE, MATOS, AZEVEDO & ASSOCIATES

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

Insurance undertakings must appoint an ombudsman (the person appointed should be independent and have recognised prestige and reliability).

Policyholders, beneficiaries, insured persons and injured third parties can refer their complaints to the ombudsman appointed by the relevant insurance undertaking whenever the insurance undertaking (through its complaints management function) has not responded to a complaint within 20 days (30 days in complaints involving particular complexity) from receipt of complaint or the complainant does not agree with the insurance

**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**

undertaking's response.

Decisions (recommendations) taken by the ombudsman are not binding. They should be taken within 30 days (45 days in complaints involving particular complexity). The procedure is free of charge. The Ombudsman's decisions (recommendations) are published.

Policyholders, beneficiaries, insured persons and injured third parties should be informed about insurance undertakings' complaints-handling process namely via their respective websites (such information includes the identity and contact details of the person or department to whom the complaint should be directed; minimum requirements that the complaint should meet; handling timelines; the availability of the ombudsman and ADR and their contact details, etc.). Insurance undertakings should keep records of complaints (in digital form).

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

Policyholders, beneficiaries, insured persons and injured third parties can all make a complaint to the ombudsman, as their status is the same as far as the access to such

**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**

complain scheme is concerned. The insurance undertaking's complaints management policy is applicable to: policyholders; beneficiaries; insured persons; and injured third parties.

ROMANIA – MUSAT & ASOCIATII

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

The Insurance Supervisory Commission (CSA) is the supervision and controlling body of

**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**

the Romanian insurance market. The CSA receives and responds to all notices and complaints regarding insurers' activity. According to NAC Order nr. 3/2010 for the enforcement of the Norms on the settlement of complaints regarding the activity of insurers, reinsurers, insurance and/or reinsurance intermediaries (Order nr. 3/2010), the complaints are filed to insurers directly or through CSA.

Each insurer must prepare written procedures regarding the receipt and the settlement of those complaints it has received. These complaints are registered within a unique registry of complaints in an electronic format. Each insurer must have an on-line system for the receipt of complaints and notices from complainants.

The complaints are reviewed and resolved by the department responsible for review and settlement of complaints, which is comprised of personnel specialised and qualified in the insurance field. This department is managed by a supervisor who has been appointed with the CSA approval.

The insurer shall respond to each complaint received directly from complainants, within 30 days of the complaint registration date. For each complaint received from the CSA, the insurer must send to CSA a substantiation note issued by the department for review and settlement of the complaints, justifying the resolution made in accordance with the legal provisions in force, a copy of the claim file, and the applicable insurance provisions.

If the CSA considers that the rights of policyholders or injured parties have not been observed through the resolution provided by this department, then it shall take further measures, namely: the re-assessment of the resolution; the unannounced inspection of/establishment of permanent control at the insurer's headquarters over the complaint settlement process; and the issuance of an individual decision by means of which it establishes obligations for the insurer regarding the settlement of the complaint. The

**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**

insurer shall send to CSA the quarterly report, named the Statement of Complaints.

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

The provisions of Order no. 3/2010 (see section A4) shall also apply irrespective of whether or not the complainant is the policyholder or an injured third party.

SLOVAKIA – PETERKA & PARTNERS

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

No

**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**

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

-

A4. What are the scheme's basic details?

Slovakia has an ombudsman scheme for banking complaints (the banking ombudsman does not adjudicate on the complaints, but only gives recommendations), but there is no such scheme in insurance. The Slovak National Bank, which is the supervisory authority for insurance, is expressly excluded by law from adjudicating on commercial disputes (for example with policyholders or insured parties).

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

No

B2. What are the rights of these third parties?

Generally, third parties do not have a right to bring claims against insurance undertakings, except for third party vehicle insurance, where the injured party may claim directly against the insurance undertaking.

**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**

SWEDEN – LINDAHL

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

A4. What are the scheme's basic details?

The National Board for Consumer Disputes (ARN) is competent to settle business-to-consumer disputes. Petitions are filed by the consumer. It usually takes about six months from the petition to a decision being made. Lodging an inquiry with the Board is free of charge. The Board submits recommendations on how disputes should be resolved. The claim must exceed a certain minimum (2000 SEK for matters that fall under the Insurance Department).

**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**

The Swedish Consumer Agency is a government agency and the Consumer Ombudsman (KO) can sometimes represent consumer interests in relations with businesses and pursue legal action in the courts. Such dispute must either be significant for the application of the law – i.e. to clarify the legal situation within a certain area – or the dispute must be of common interest to consumers – i.e. concern a great number of consumers.

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

An insurance policy which covers real property or fixed or personal property shall provide a claim to any third party which has a secured interest in the policyholder's protected ownership right, ground lease, or chattel mortgage and any third party who bears the risk for the property in connection with its transfer.

In conjunction with third party liability insurance, the injured party may direct a claim for indemnification to the insurance company pursuant to the insurance contract where: (i) the insured has an obligation by statute or any other statutory provision, to have third party liability insurance which covers the loss; (ii) the insured has been placed into insolvent liquidation or public composition has been ordered; or (iii) the insured is a legal entity

**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**

which has been dissolved.

Where, in conjunction with a third party liability insurance policy, the insurance company has paid insurance indemnification to the insured and later learns that the injured party did not receive from the insured the damages to which it was entitled, the company shall be obliged to indemnify the injured party for the shortfall. However, such amount shall not exceed the amount paid by the company to the insured.

U.K./SCOTLAND – RPC/BRODIES

Section A

A1. Do complainants (whether or not subject to eligibility criteria) have access to an ombudsman scheme or similar 'complaints body'?

Yes

A2. Does the scheme cover insurance?

Yes

A3. Does the scheme meet the principles in Commission Recommendation (98/257/EC)?

Yes

**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**

A4. What are the scheme's basic details?

In the UK consumers and micro-enterprises (firms with fewer than 10 employees and a turnover or annual balance sheet that does not exceed €2 million) are eligible complainants and can make a complaint to the Financial Ombudsman Service (FOS) if the sum in dispute is less than £150,000.

Complaints may be made in any language and must be received within:

- 6 years from event or (if later) 3 years from when cause of complaint could have been discovered; and
- 6 months from the financial institution's final response letter

Consumers do not have to pay a fee when referring a complaint to FOS, however, financial institutions referred to FOS must pay a £500 fee.

Decisions reached by FOS are binding on those financial institutions referred, but not on the referring consumer.

FOS resolves most complaints within 6 months.

The FOS complies with the recommendations contained in Commission Recommendation (98/257/EC) ('the Recommendation') and is a founding member of FIN-NET, the European network of national out-of-court complaint schemes compliant with the Recommendation.

**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**

Section B

B1. Are third parties (injured or otherwise) able to make a complaint to any such 'complaints body', or otherwise bring a claim, against an insurance undertaking?

Yes

B2. What are the rights of these third parties?

In the UK third parties may have direct rights against insurers in two instances:

a) In the first instance, if an injured third party has a claim against an insured, and the insured is insolvent and cannot pay any judgment debt awarded against them by a court, the injured third party may then proceed against the insured's insurers under s.1 Third Parties (Rights against Insurers) Act 1930.

b) In the second instance, under reg. 3(2) European Communities (Rights against Insurers) Regulations 2002 ('the Regulations') a new right of action is created allowing third parties injured in motor accidents to proceed directly against insurers to the extent they have a claim in tort against the relevant insured. The Regulations implement the provisions of the six EU Motor Insurance Directives enacted by the EU.

Third parties who have a claim against an insurer in the first instance are entitled to refer a complaint to FOS if they are an eligible complainant.

However, third parties whose rights arise from the Regulations are excluded from making a complaint to FOS.

**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**

In Scotland, notwithstanding the statutory rights above there exists the common law doctrine of *jus quaesitum tertio*. The doctrine may be applicable in the context of liability insurance where certain criteria are met. The doctrine may apply to create an enforceable right for the beneficiary (i.e., someone other than the insured) of a contract of insurance against an insurer. The doctrine has been recognised in Scotland for over 400 years however the Scottish Courts have applied the doctrine in limited circumstances in a modern commercial context.

Appendix 2: TerraLex®

TerraLex® is an international network of over 150 law firms in 100 jurisdictions.

Its mission is to help member firms serve their clients' legal needs and business interests through a worldwide network of quality law firms that meets high professional standards.

As a voluntary association of independent law firms, each TerraLex member retains the right to work with any law firm or client. Member firms operate as separate enterprises, responsible for their own staff and work products.

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3.1.

**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**

3.2.		
3.3.	It is desirable to harmonise complaints handling policies across the EU which require the guidelines to go further than they do currently. However, we believe that this is a ongoing process which might necessitate some changes to national ADR/Ombudsman schemes. This may take time to implement.	Public
3.4.		
3.5.	Given that some jurisdictions have Ombudsmen schemes for insurance disputes and some do not, it is important to specify which authority is to have competency in this area.	Public
3.6.	Given that these guidelines reflect the existing regulatory position in most Member States there is a concern that permitting any further 'gold plating' of regulatory obligations will subject insurance undertakings to such divergent obligations with regards to complaints that the objective of this consultation, harmonisation of the internal market for insurance, will be frustrated.	Public
3.7.	Many jurisdictions allow for third parties to bring complaints to an insurance undertaking and from there to an Ombudsman services. However, some do not, and explicitly exclude injured third parties from making complaints before the national Ombudsman service. This means that insurance undertakings in some Member States will be exposed to a greater pool of 'complainants' and a much greater likelihood of facing proceedings before an Ombudsman service. The scope of liabilities arising from complaints should be harmonised at the EU level.	Public
3.8.		
3.9.		
3.10.		
3.11.		
3.12.		
3.13.	The number of complaints that insurance undertakings receive will be partially dictated by the size of the possible pool of complainants. Thus insurance undertakings in Member States in which injured third parties are permitted complainants will be unfairly penalised as their complaint statistics will be, in all likelihood, much higher than those of undertakings in jurisdictions which do not allow for injured third party complaints.	Public
3.14.		

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
3.15.	As some jurisdictions do not allow for ADR of insurance disputes this means that this guideline will have much less value for consumers buying insurance in certain Member States than in others.	Public
3.16.	Given the differences in availability of ombudsman schemes or complaints bodies in different Member States the options presented by insurance undertakings to consumers buying insurance in certain Member States will be much more restricted than in others. This reduces the consumer's access to redress and may lead to greater litigation.	Public
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		
Questions on the Impact Assessment	<p>We are very supportive of EIOPA's aims in undertaking this exercise. However, as it is desirable to harmonise complaints handling policies across the EU, the guidelines may need to go further than they do currently. We believe that this might necessitate some changes to national ombudsman schemes and complaints bodies.</p> <p>While many of the policies contained in the guidelines are in place, the underlying legal framework for handling disputes varies widely from state to state. These guidelines will have little practical impact on consumers or the single market for insurance unless greater substantive harmonisation of ombudsman schemes and complaints bodies takes place and consumers can be confident that they will have access to comparable redress schemes across the single market.</p> <p>However, the guidelines should not seek to expand the rights of third parties. With the exception of those injured in motor accidents, third parties have different rights of action and of complaints in the various Member States. Giving third parties the right to sue or complain to insurers for losses arising under liability policies more generally would lead to insurers being exposed to much greater liabilities than they are at present. Liability insurance is a private, commercial agreement to protect an insured from exposures to its clients and the world at large. Although it provides an element of social security, potential beneficiaries in the world at large should not be granted rights of action against insurers except in the most limited of circumstances or following full and thorough consultation. We are pleased to note that these guidelines do not propose any extension to such third party rights.</p>	Public

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
Q1.	Insurance undertakings operating in a common market should be under consistent obligations towards their customers. Not only does this provide better security for customers, it provides greater legal certainty for the industry, allows for a greater standardisation of complaints procedures and complaints handling software, and reduced costs and premiums for consumers.	Public
Q2.		
Q3.	Some Member States may need to establish an ombudsman scheme or complaints body competent to hear insurance disputes. This may lead to some substantial initial costs.	Public
Q4.		
General Comments on the Best Practices Report on Complaints Handling by Insurance Undertakings (EIOPA-CP-11/010b)		