

JC-CP-2013-03
6 November 2013

Joint Committee Consultation Paper on draft guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors

Responding to this consultation paper

The European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) invite comments on all matters set out in this consultation paper and, in particular, on the specific questions listed in Annex 2. Comments are most helpful if they:

- indicate the number of the question to which the comment relates;
- respond to the question stated;
- contain a clear rationale, also clearly stating the costs and benefits;
- provide evidence to support the views expressed/rationale proposed; and
- describe any alternatives ESMA/EBA should consider.

Please send your comments to ESMA and the EBA by email to sarah.raisin@esma.europa.eu and joint-committee@eba.europa.eu by 7 February 2014, indicating the reference 'JC complaints-handling CP 2013-03' in the subject field.

Please note that comments submitted after the deadline, or sent to another e-mail address, will not be processed.

Publication of responses

All contributions received will be published following the end of the consultation, unless otherwise requested. Please indicate clearly and prominently in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an e-mail message will not be treated as a request for non-disclosure. Note that a confidential response may be requested from us in accordance with ESMA's and the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's and the EBA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu and www.eba.europa.eu under 'Legal Notice'.

Who should read this paper?

This consultation paper will be of interest to investment firms, UCITS management companies and UCITS investment companies that have not designated a management company, external Alternative Investment Fund Managers (AIFMs) providing certain MiFID services, credit institutions, payment institutions and e-money institutions. We would also welcome views from regulators, relevant trade bodies, market participants, customers and other interested parties.

Contents

1. Overview	5
2. Draft guidelines on complaints-handling	7
Annex 1 – Cost-benefit analysis	15
Annex 2 – List of consultation questions.....	21

Acronyms

AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Manager Directive
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
EBA	European Banking Authority
EIOPA	European Insurance and Occupational Pensions Authority
EMD	E-Money Directive
ESMA	European Securities and Markets Authority
EU	European Union
MiFID	Markets in Financial Instruments Directive
PSD	Payment Services Directive
UCITS	Undertakings for collective investment in transferable securities

1. Overview

Reasons for publication

1. In June 2012, following public consultation, EIOPA published “Guidelines on Complaints-Handling by Insurance Undertakings”.¹ These guidelines were issued to address two areas of concern:
 - a) Information asymmetry: Insurers may not handle complaints in the best interests of policyholders, or policyholders may not know the standards to which insurers should adhere, and may not be aware of the possibility to submit a complaint.
 - b) An existing regulatory gap: A current lack of European Union (EU) rules on complaints-handling by insurance companies, leading to a diverse number of national approaches and, potentially, an uneven playing field.
2. To ensure the adequate protection of complainants, EIOPA’s guidelines seek to ensure that insurers’ arrangements for complaints-handling are subject to a minimum level of supervisory convergence across the EU.
3. The Joint Committee’s² Sub-Committee on Consumer Protection and Financial Innovation (JCSCCPFI) considered the EIOPA complaints-handling guidelines with a view to a possible read-across to both the securities and the banking sectors, noting the added value of this in terms of improving confidence in financial services, and in facilitating the work of national competent authorities.
4. Using the EIOPA guidelines as a base, and taking into account the different regulatory provisions for complaints handling between the securities and banking sectors, and the Alternative Dispute Resolution Directive, ESMA and the EBA have adapted, without fundamental change, the EIOPA guidelines for the securities and banking sectors. This approach should help to ensure a consistent approach to complaints-handling across the banking, investment and insurance sectors - to the benefit of firms (some of which may sell products from more than one sector), national authorities (which will have to oversee implementation of one set of guidelines in their respective jurisdictions), and consumers (who will be able to rely on the same approach irrespective of what type of product they have purchased).
5. In seeking to further supervisory convergence across sectors, these draft guidelines – issued by ESMA and the EBA under the powers set out in Article

¹ EIOPA-BoS-12/069, 14 June 2012. See https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/guidelines/complaints_handling/EIOPA_Complaints_Handling_GL_EN.pdf

² The Joint Committee is a forum for cooperation between the three European Supervisory Authorities (ESAs). It was established on 1 January 2011 in terms of Article 54 of the respective ESA Regulations. Its aim is to strengthen cooperation between the three ESAs [the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA), and the European Insurance and Occupational Pensions Authority (EIOPA)] to ensure cross-sectoral consistency.

16 of the ESA Regulations³ - should, in turn, strengthen consumer protection – a key objective for ESMA and for the EBA.

Question 1: Do you agree that complaints-handling is an opportunity for further supervisory convergence? Please also state the reasons for your answer.

Application

6. The proposed guidelines, which are high-level and addressed to competent authorities only, will apply in relation to complaints about activities carried out by:
- a) investment firms (as defined in Article 4(1)(1) of MIFID);
 - b) management companies (as defined in Article 2(1)(b) of the UCITS Directive) and investment companies that have not designated a management company (as referred to in Article 30 of the UCITS Directive);
 - c) external Alternative Investment Fund Managers (AIFMs (as defined in 5(1)(a) of the AIFMD) when providing investment services⁴;
 - d) credit institutions (as defined in Article 4(1) of the Capital Requirements Regulation); and
 - e) payment institutions and electronic money institutions (as defined in Article 4(4) of the Payment Services Directive, and Article 2(1) of the E-Money Directive respectively).

Together, the above financial market participants are referred to as 'firms' in the draft guidelines.

7. Section 2 below sets out further background and the legal basis for the proposed guidelines on complaints-handling, as well as the draft guidelines.
8. Annex 1 sets out the cost-benefit analysis, and Annex 2 lists the consultation questions set out in the paper.

³ ESMA - Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

EBA - Regulation (EU) No 1093/2010 of The European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

⁴ These guidelines only apply to external AIFMs when they are providing the investment services of individual portfolio management or non-core services (within the meaning of Article 6(4)(a) and (b) of the AIFMD).

Next steps

9. ESMA and the EBA will consider the responses they receive to this consultation paper and expect to publish a final report, and final guidelines, in Q1 2014.

2. Draft guidelines on complaints-handling

Background

10. ESMA and the EBA have considered their respective responsibilities with regard to “enhancing customer protection”⁵ when developing these draft guidelines and have noted the G20’s October 2011 “High-level principles on financial consumer protection” which mention “adequate complaints handling and redress mechanisms” as a means to reinforce financial consumer protection.⁶
11. In addition, ESMA and the EBA have also considered the following:
 - a) For the securities sector, based on the MiFID and UCITS rules on organisational requirements; and on the MiFID rules on redress mechanisms:
 - i. Recital 3 of the MiFID Implementing Directive⁷ which states that “*It is necessary to specify concrete organisational requirements and procedures for investment firms performing [investment] services or activities. In particular, rigorous procedures should be provided for with regard to ... complaints handling ...*”.
 - ii. Article 10 of the MiFID Implementing Directive⁸ which sets out the obligations on firms in respect of complaints-handling and states that: “Member States shall require investment firms to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients or potential retail clients, and to keep a record of each complaint and the measures taken for its resolution”.

⁵ Article 1(5) of the ESA regulations states that: “The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall contribute to: [...] enhancing customer protection.”

⁶ See point 9 of the G20 High Level Principles on Financial Consumer Protection, October 2011

<http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>

“Complaints Handling and Redress: Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers. In accordance with the above, financial services providers and authorised agents should have in place mechanisms for complaint handling and redress. Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorised agents’ internal dispute resolution mechanisms. At a minimum, aggregate information with respect to complaints and their resolutions should be made public.”

⁷ Directive 2006/73/EC.

⁸ Which implements Article 13(2) of MiFID.

- iii. Article 15 of the UCITS Directive⁹ which states that: *“Management companies or, where relevant, investment companies shall take measures in accordance with Article 92 and establish appropriate procedures and arrangements to ensure that they deal properly with investor complaints and that there are no restrictions on investors exercising their rights in the event that the management company is authorised in a Member State other than the UCITS home Member State. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.”*

- iv. Article 6 of the UCITS Implementing Directive¹⁰ which sets out the obligations on management companies pursuing the activity of management of a UCITS in respect of complaints-handling and states that:
 - 1. *“Member States shall require management companies to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors.*

 - 2. *Member States shall require management companies to ensure that each complaint and the measures taken for its resolution are recorded.*

Investors shall be able to file complaints free of charge. The information regarding procedures referred to in paragraph 1 shall be made available to investors free of charge.”

- v. Recital 61 of MiFID which states that *“With a view to protecting clients and without prejudice to the right of customers to bring their action before the courts, it is appropriate that Member States encourage public or private bodies established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes, taking into account Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. When implementing provisions on complaints and redress procedures for out-of-court settlements, Member States should be encouraged to use existing cross-border cooperation mechanisms, notably the Financial Services Complaints Network (FIN-Net).”*

- vi. Article 53 of MiFID which states that:
 - 1. *“Member States shall encourage the setting-up of efficient and effective complaints and redress procedures for the out-*

⁹ Directive 2009/65/EC.

¹⁰ Directive 2010/43/EU.

of-court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms, using existing bodies where appropriate.

2. *Member States shall ensure that those bodies are not prevented by legal or regulatory provisions from cooperating effectively in the resolution of cross-border disputes.”*

12. For the banking sector, which, like the insurance sector, has not yet developed as explicit complaints-handling requirements as are established in securities legislation:

- i. Article 74 of the Capital Requirements Directive¹¹, Article 10(4) of the Payment Services Directive¹² and Article 3(1) of the E-Money Directive¹³ which require credit institutions, payment institutions and electronic money institutions to have robust governance arrangements, including effective procedures to identify, manage, monitor and report the risks to which they are exposed and adequate internal control mechanisms.
- ii. The requirement in Article 42(7) of the Payment Services Directive to ensure provision of information on the out-of-court complaint and redress procedures available to the payment service user.
- iii. The requirement in Article 83 of the Payment Services Directive for Member States to ensure adequate and effective out-of-court complaint and redress procedures for the settlement of disputes between payment service users and their payment service providers arising out of the Directive.

Purpose

13. These guidelines, seek to:

- a) clarify expectations relating to firms’ organisation relating to complaints-handling;
- b) provide guidance on the provision of information to complainants;
- c) provide guidance on procedures for responding to complaints, thereby ensuring the adequate protection of consumers;
- d) ensure the adequate protection of consumers by harmonising the arrangements of firms for the handling all complaints that they receive; and

¹¹ Directive 2013/36/EU.

¹² Directive 2007/64/EC.

¹³ Directive 2009/110/EC.

- e) ensure that firms' arrangements for complaints-handling are subject to a minimum level of supervisory convergence across the EU.

Definitions

14. Unless otherwise specified, terms used in the following sectoral legislation have the same meaning in these guidelines:
- a) the Markets in Financial Instruments Directive (MiFID);
 - b) the Alternative Investment Fund Manager Directive (AIFMD);
 - c) the Undertakings for collective investment in transferable securities (UCITS Directive);
 - d) the Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR);
 - e) the Payment Services Directive (PSD);
 - f) the E-Money Directive (EMD).
15. For the purposes of these guidelines only, the indicative definitions set out in the table below, which do not over-ride equivalent definitions in national law, have been developed.

<i>firm(s)</i>	<p>The following financial market participants if they are carrying out (i) investment services listed in Section A of Annex I of MiFID and ancillary services listed in Section B thereof, or (ii) a banking service listed in Annex I to CRD, or (iii) the service of collective portfolio management of UCITS:</p> <ul style="list-style-type: none"> • investment firms (as defined in Article 4(1)(1) of MiFID); • management companies (as defined in Article 2(1)(b) of the UCITS Directive) and investment companies that have not designated a management company (as referred to in Article 30 of the UCITS Directive); • external AIFMs (as defined in 5(1)(a) of the AIFMD) when providing services pursuant to Article 6(4) of the AIFMD; • credit institutions (as defined in Article 4(1) of the CRR); and • payment institutions and electronic money institutions (as defined in Article 4(4) of the PSD, and Article 2(1) of the EMD respectively).
----------------	--

<i>complaint</i>	A statement of dissatisfaction addressed to a firm by a natural or legal person relating to the provision of (i) an investment service provided under MiFID, the UCITS Directive or the AIFMD; or (ii) a banking service listed in Annex I to the CRD; or (iii) a service of collective portfolio management under the UCITS Directive.
<i>complainant</i>	A natural or legal person who is presumed to be eligible to have a complaint considered by a firm and who has already lodged a complaint.

Scope

16. These guidelines apply to authorities competent for supervising complaints-handling by firms in their jurisdiction. This includes circumstances where the competent authority supervises complaints-handling under EU and national law, by firms doing business in their jurisdiction under freedom of services or freedom of establishment.
17. These guidelines do not apply where a firm receives a complaint about:
 - a) activities other than those supervised by 'competent authorities' pursuant to Article 4(3) of the ESMA Regulation, or Article 4(2) of the EBA Regulation; or
 - b) the activities of another entity which is providing investment services, the service of collective portfolio management of UCITS or banking services and for which that firm has no legal or regulatory responsibility (and where those activities form the substance of the complaint).

However, that firm should respond, where possible, explaining the firm's position on the complaint and/or, where appropriate, giving details of the firm or other financial institution responsible for handling the complaint.

Compliance and reporting obligations

18. These guidelines are issued pursuant to Article 16 of the ESA Regulations. In accordance with Article 16(3), competent authorities and financial institutions must make every effort to comply with the guidelines.
19. These guidelines set out ESMA's and the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied. ESMA and the EBA therefore expect all competent authorities and financial institutions to whom guidelines are addressed to comply with guidelines. Competent authorities to whom guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their

supervisory processes), including where guidelines are directed primarily at institutions.

20. Competent authorities must notify ESMA and the EBA whether they comply or intend to comply with the guidelines, stating their reasons for non-compliance, within two months of the date of publication of the translated versions by ESMA and the EBA to [ESMA and EBA email addresses]. In the absence of a response by this deadline, competent authorities will be considered non-compliant. A template for notifications is available on the ESMA and EBA websites.

Guidelines on complaints-handling

Guideline 1 - Complaints management policy

1. Competent authorities should ensure that:
 - a) A 'complaints management policy' is put in place by firms. This policy should be defined and endorsed by the firm's senior management, who should also be responsible for its implementation and for monitoring compliance with it.
 - b) This 'complaints management policy' is set out in a (written) document e.g. as part of a 'general (fair) treatment policy'.
 - c) The 'complaints management policy' is made available to all relevant staff of the firm through an adequate internal channel.

Guideline 2 - Complaints management function

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

Guideline 3 - Registration

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

Guideline 4 - Reporting

4. Competent authorities should ensure that firms provide information on complaints and complaints-handling to the competent authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant.

Guideline 5 - Internal follow-up of complaints-handling

5. Competent authorities should ensure that firms analyse, on an on-going basis, complaints-handling data, to ensure that they identify and address any recurring or systemic problems, and potential legal and operational

risks, for example, by:

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

Guideline 6 – Provision of information

6. Competent authorities should ensure that firms:

- a) On request or when acknowledging receipt of a complaint, provide written information regarding their complaints-handling process.
- b) Publish details of their complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or via the firm's website.
- c) Provide clear, accurate and up-to-date information about the complaints-handling process, which includes:
 - (i) details of how to complain (e.g. the type of information to be provided by the complainant, the identity and contact details of the person or department to whom the complaint should be directed);
 - (ii) the process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged, indicative handling timelines, the availability of a competent authority, an ombudsman or alternative dispute resolution (ADR) mechanism, etc.).
- d) Keep the complainant informed about further handling of the complaint.

Guideline 7 - Procedures for responding to complaints

7. Competent authorities should ensure that firms:

- a) Seek to gather and investigate all relevant evidence and information regarding the complaint.
- b) Communicate in plain language, which is clearly understood.
- c) Provide a response without any unnecessary delay or at least within the time limits set at national level. When an answer cannot be provided within the expected time limits, the firm should inform the complainant about the causes of the delay and indicate when the firm's investigation is likely to be completed.
- d) When providing a final decision that does not fully satisfy the complainant's demand (or any final decision, where national rules require it), include a thorough explanation of the firm's position on the complaint and set out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, ADR mechanism, national competent authorities, etc. Such decision should be provided in

writing where national rules require it.

Question 2: Please comment on each of the guidelines, clearly indicating the number of the guideline (there are 7 guidelines) to which your comments relate.

Annex 1 – Cost-benefit analysis

1. Article 16(2) of the ESA Regulations¹⁴ require the ESAs, where appropriate, to analyse the potential costs and benefits relating to proposed guidelines. It also states that such analyses must be proportionate in relation to the scope, nature and impact of the proposed guidelines.
2. This cost-benefit analysis (CBA) sets out an assessment of the potential costs and benefits of the proposed guidelines on complaints-handling.

Problem definition

3. The same areas of concerns as those identified by EIOPA in their “Guidelines on Complaints-Handling by Insurance Undertakings”¹⁵ are present in the EU securities and banking sectors, namely:
 - i. Information asymmetry between firms and consumers: in both sectors, firms may not handle complaints in the best interests of their customers. Customers may also not know the standards to which firms should adhere and be unaware of the right to submit a complaint.
 - ii. An existing regulatory gap: Current EU rules on complaints-handling lead to a diverse number of national approaches and, potentially, an uneven playing field.
4. Various obligations regarding complaints-handling are included in existing European Union (EU) and national legislation for each sector. These diverging requirements are currently non-harmonised and difficult to compare. They hamper legal clarity and impede the creation of a level playing field within the single market.

Objective of the proposed guidelines

5. The proposed guidelines take the form of high-level principles for handling complaints in the securities and banking sectors. Whilst recognising that most of the content of these draft guidelines is already in place at national level particularly in the securities sector (in terms of compliance with existing regulatory requirements), the purpose of the draft guidelines is to ensure that firms’ arrangements for complaints-handling are subject to a minimum level of supervisory convergence across the EU.

¹⁴ ESMA - Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

EBA - Regulation (EU) No 1093/2010 Of The European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

¹⁵ EIOPA-BoS-12/069, 14 June 2012.

6. The draft guidelines do not reflect any regulatory changes, neither do they purport to provide substantially new guidance relating to the applicable regulatory requirements.¹⁶ However, ESMA and the EBA expect the guidelines to promote greater convergence in the interpretation of, and supervisory approaches to, the requirements set out in the Markets in Financial Instruments Directive (MiFID), the Undertakings for collective investment in transferable securities (UCITS) Directive, the Alternative Investment Fund Manager Directive (AIFMD), the Capital Requirements Directive (CRD), the Payment Services Directive (PSD), and the E-Money Directive (EMD) by emphasising a number of important issues, and thereby enhancing the value of existing standards. In turn, ESMA and the EBA anticipate a corresponding strengthening of investor/consumer protection – a key objective for both ESMA and the EBA.

Impact of the proposals

7. This section presents a qualitative assessment of the potential costs and benefits of the proposed guidelines. ESMA and EBA expect that some compliance costs will be incurred by competent authorities and firms in order to fully incorporate the guidelines into their supervisory practices and complaints-handling practices. These guidelines will generate additional compliance costs for those Member States where some of the proposed principles are not applied. The main benefits for consumers will flow from the convergence of complaints-handling practices that raise quality standards.

Survey

8. In order to inform the CBA for these proposed ESMA/EBA guidelines, ESMA and the EBA gathered information from national competent authorities on existing requirements in the different Member States. ESMA and the EBA received detailed responses from 23 out of 31 national competent authorities. Table 1 below shows, for each guideline and for each firm type, whether the proposed guidelines already meet, exceed or are lower than existing requirements already in place.

¹⁶ See paragraph 11 on page 7 above.

Table 1 – Existing national requirements in Member States (MSs) compared with the proposed guidelines⁽¹⁷⁾⁽¹⁸⁾

		Number of MSs where proposed guidelines are already met		Number of MSs where proposed guidelines are not currently met		Total responses	Percentage of MSs where some or all the proposed guidelines are already met or exceeded
		MSs where the guidelines are already met	MSs where higher requirements are already in place	MSs where some of the guidelines are already met	MSs where no requirements at all are in place		
G1	IF	14	1	6	1	22	95%
	MC	15	1	5	1	22	95%
	UCITS	10	1	5	4	20	80%
	AIFM	12	1	1	6	20	70%
	CI	12	1	4	3	20	85%
	PI	9	1	5	4	19	79%
	EMI	8	1	5	5	19	74%
G2	IF	15	1	3	3	22	86%
	MC	16	1	2	3	22	86%
	UCITS	13	1	2	4	20	80%
	AIFM	14	1	1	4	20	80%
	CI	14	1	1	4	20	80%
	PI	9	1	2	7	19	63%
	EMI	8	1	2	8	19	58%
G3	IF	13	2	5	2	22	91%
	MC	14	2	4	2	22	91%
	UCITS	11	2	3	4	20	80%
	AIFM	12	2	1	5	20	75%
	CI	13	1	0	6	20	70%
	PI	7	1	1	10	19	47%
	EMI	6	1	1	11	19	42%
G4	IF	12	2	5	3	22	86%
	MC	10	2	6	4	22	82%
	UCITS	9	2	3	6	20	70%
	AIFM	9	2	3	6	20	70%
	CI	10	1	5	4	20	80%
	PI	3	1	7	8	19	58%
	EMI	3	1	7	8	19	58%
G5	IF	9	1	7	5	22	77%
	MC	9	1	6	6	22	73%
	UCITS	7	1	3	9	20	55%
	AIFM	8	1	4	7	20	65%
	CI	10	1	4	5	20	75%
	PI	7	1	4	7	19	63%
	EMI	6	1	4	8	19	58%
G6	IF	8	2	9	3	22	86%
	MC	8	2	10	2	22	91%
	UCITS	6	2	7	5	20	75%
	AIFM	7	2	5	6	20	70%
	CI	8	2	7	3	20	85%
	PI	5	2	8	4	19	79%
	EMI	5	1	8	5	19	74%
G7	IF	9	2	8	3	22	86%
	MC	8	2	9	3	22	86%
	UCITS	6	2	6	6	20	70%
	AIFM	7	2	6	5	20	75%
	CI	9	2	6	3	20	85%
	PI	6	2	6	5	19	74%
	EMI	6	1	7	5	19	74%

¹⁷ IF = investment firms; MC = management companies (as defined in Article 2(1)(b) of the UCITS Directive); UCITS = investment companies that have not designated a management company (as referred to in Article 30 of the UCITS Directive); AIFMs = external alternative investment fund managers (as defined in 5(1)(a) of AIFMD) when providing investment services; CI = credit institutions; PI = payment institutions; EMI = electronic money institutions.

¹⁸ G1 = complaints management policy; G2 = complaints management function; G3 = registration; G4 = reporting; G5 = internal follow-up of complaints-handling; G6 = provision of information; G7 = procedures for responding to complaints.

Compliance costs

9. **G1 - Complaints management policy** - There are some costs expected in relation to the development of an internal complaints-handling policy (including internal follow-up of complaints-handling) for firms that have not yet implemented one. According to the ESMA/EBA survey, this is more likely to be the case for: investment companies that have not designated a management company; external alternative investment fund managers, payment institutions; and electronic money institutions. Depending on the type of the firm, between 1 and 6 Member States that provided information currently have no requirements regarding complaints management policies at all, and between 1 and 6 have some form of complaints management policy required.
10. **G2 - Complaints management function** - In cases where there is no complaints management function, firms might be expected to incur very low one-off costs in rearranging the internal systems to nominate a management representative to oversee the complaints-handling process. According to the ESMA/EBA survey, this is likely to have more of an impact on payment institutions and electronic money institutions. For payment institutions, 7 of the 19 Member States that provided information have no requirements in this area; and for electronic money institutions, 8 of the 19 Member States that provided information have no requirements in this area.
11. **G3 - Registration** - Where complaints record-keeping and registration systems are not in place already, some one-off, as well as on-going, costs of introducing these may be incurred. The survey responses show again that payment institutions and electronic money institutions are more likely to bear these types of costs. Currently, there are no requirements at all for payment institutions in 10 out of the 19 Member States that provided information. Similarly, there are no requirements for electronic money institutions in 11 of the 19 Member States that provided information in this area.
12. **G4 - Reporting** - For firms in Member States where there is no requirement for complaints reporting, costs will be incurred in relation to generating and providing the required information. There will also be costs (initial and on-going) for competent authorities or ombudsmen that currently do not require information on quantity and types of complaints by firms. Depending on the type of firm, between 3 and 8 Member States that provided information have currently no reporting requirement at all, and between 3 and 7 have some form of reporting required.
13. **G5 - Internal follow-up of complaints-handling** - Where there are no requirements for firms to provide information about the complaints-handling process to consumers, there may be some initial and on-going costs (for example, communication, publication, software development, etc.). Depending on the type of firm, between 5 and 9 of the 22 Member States

that provided information have currently no requirements for internal follow-up at all, and between 3 and 7 Member States have some form of follow-up required.

14. **G6 - Provision of information; and G7 - Procedures for responding to complaints** - Where there are no time limits introduced at national level, or the principle for responding to customers complaints as soon as possible is not applied, there might be some costs associated with introducing the related internal procedures. Depending on the type of firm, between 2 and 6 of the 22 Member States that provided information currently have no requirements for provision of information or responding to complaints at all, and between 5 and 10 of the 22 Member States have some requirements relating to provision of information and responding to complaints.
15. In summary, investment firms, management companies and credit institutions are the three types of firms for which, in most Member States, the requirements of the guidelines are met or are close to being met. Payment and electronic money institutions are the two types of firms, for which, in most Member States, the requirements meet only partially those proposed in these guidelines.
16. The ESMA/EBA survey results indicate that requirements relating to Guidelines 2, 3, 4 and 5 may lead to some additional costs in the banking sector. In the securities sector, the survey results indicate that requirements relating to Guidelines 4, 5 and 7 may lead to some additional costs. From the responses received to the survey, only one NCA specifically raised the issue of the impact of the guidelines leading to additional financial and human resources for the NCA itself.

Benefits

17. These guidelines are aimed at converging complaints-handling practices at national level. This should facilitate the fair investigation of complaints (including prompt, effective and on-going analysis and mitigation of the root causes of complaints), and deliver improved outcomes for consumers.
18. Improving internal complaints-handling has the additional incentive for firms to improve the quality of the products and services provided in order to reduce the volume of complaints. Economic behaviour research indicates that there is a direct relationship between corporate reputation and financial performance.¹⁹
19. Introducing a guideline on a complaints-handling practice highlights the importance of having a documented process for complaints-handling by

¹⁹ Sabate, J. M. and Puente, E. (2003), Empirical analysis of the relationship between corporate reputation and financial performance: A survey of the literature, *Corporate Reputation Review*, 6:2, pp. 161-177.

firms. This should also encourage adequate internal communication about the complaints-handling process in firms.

20. The endorsement of the complaints-handling procedure by firms' senior management should also introduce a quality assurance element in the complaints-handling process.
21. The introduction of a complaints management function to oversee complaints-handling and the identification and mitigation of possible conflicts of interest within firms is expected to lead to increased efficiency and effectiveness in the activity of complaints-handling. It should also enhance the coordination with supervisory authorities and supervisory effectiveness.
22. Improved record-keeping and registration highlights the importance of better knowledge about the risks relating to a firm's activities, improves the consistency of management information, improves the organisation of complaints data, facilitates the reporting of complaints-handling statistics, and improves collaboration with supervisory authorities.
23. The proposed guidelines on information to consumers are intended not only to harmonise existing practices in most Member States, but, essentially, to make the complaints-handling process more transparent and easily accessible for consumers.

Question 3: Do you agree with the analysis of the cost and benefit impact of the proposals?

Question 4: Please provide any evidence or data that would further inform the analysis of the likely cost and benefit impacts of the proposals.

Annex 2 – List of consultation questions

Question 1: Do you agree that complaints-handling is an opportunity for further supervisory convergence? Please also state the reasons for your answer.

Question 2: Please comment on each of the guidelines, clearly indicating the number of the guideline (there are 7 guidelines) to which your comments relate.

Question 3: Do you agree with the analysis of the cost and benefit impact of the proposals?

Question 4: Please provide any evidence or data that would further inform the analysis of the likely cost and benefit impacts of the proposals.