ESMA, EBA and EIOPA Joint Committee final report on Guidelines for complaints-handling for the securities and banking sectors. July 2014.

The Joint Committee of European Supervisory Authorities (hereinafter ESAs) issued, on the 27th May 2014, a **final report containing the guidelines for complaints-handling for the securities and banking sectors**. The European Insurance and Occupational Pensions Authority (hereinafter EIOPA) published, in June 2012, its guidelines on complaints-handling by insurance undertakings. ESMA and the European Banking Authority (hereinafter EBA) have adopted the guidelines that EIOPA had issued for the insurance sector in order to unify the complaints-handling across the banking, investment and insurance sector. This will benefit 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 enable a minimum level of supervisory convergence) and consumers (who will able to rely on the same approach irrespective of what type of product they have purchased and where they have purchased it).

Competent authorities will apply these Guidelines for supervising complaints-handling by firms in their jurisdiction within the UE. This includes circumstances where the competent authority supervises complaints-handling by firms doing business in their jurisdiction under freedom of services or freedom of establishment under EU law.

These guidelines do not apply where a firm receives a complaint about: i) activities other than those supervised by 'competent authorities' pursuant to ESMA and EBA Regulation; or ii) the activities of another entity 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.

For the purpose of these guidelines a complaint is 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 Undertaking Collective Investments in Transferable Securities Directive (UCITS Directive) or the Alternative Investment Funds Manager Directive (AIFMD); or (ii) a banking service listed in Annex I to the Capital Requirement Directive (CRD); or (iii) a service of collective portfolio management under the UCITS Directive.

Annex 1 of the report incorporates the complete text of the Guidelines for complaints handling in banking and securities.

Guideline 1 – Complaints management policy

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"; and 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

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

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

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

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

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:

- 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);
- 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

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.

If you want to read the final report on the Guidelines of the Joint Committee EIOPA ESMA, EBA and the management of complaints and claims in banking and securities, please click: http://www.esma.europa.eu/system/files/jc_2014_43_-_joint_committee_-_final_report_complaints-handling_guidelines.pdf