

04/10/2018
JC 2018 35

Guidelines on complaints-handling for the securities and banking sectors

Guidelines on complaints-handling for the securities (ESMA) and banking (EBA) sectors

Purpose

1. In order to ensure the adequate protection of consumers, 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;
 - d. harmonise the arrangements of firms for the handling of all complaints they receive; and
 - e. ensure that firms' arrangements for complaints-handling are subject to a minimum level of supervisory convergence across the EU.

Scope

2. 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.
3. With regard to non-credit institution creditors and credit intermediaries, the guidelines apply to the extent that those authorities have been designated as competent for ensuring the application and enforcement of the provisions of the Mortgage Credit Directive to which these guidelines relate.
4. 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 Article 5 of the Mortgage Credit Directive; or
 - b. 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.

Compliance, reporting obligations and date of application

5. These guidelines are issued pursuant to Article 16 of the ESA Regulations¹. In accordance with Article 16(3), competent authorities and financial institutions must make every effort to comply with the guidelines.
6. These guidelines set out ESMA's and the EBA's view of appropriate supervisory practices within the European System of Financial Supervision and of how Union law should be applied. ESMA and the EBA therefore expect all competent authorities and financial institutions to which these guidelines are addressed to comply with guidelines. Competent authorities to which these 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.
7. Competent authorities must notify ESMA and/or 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 JCguidelines.complaintshandling@esma.europa.eu and compliance@eba.europa.eu. 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.
8. These guidelines apply from the date of the reporting requirement referred to in paragraph 7. With regard to authorities competent for supervising complaints-handling by credit intermediaries and non-credit institution creditors under the Mortgage Credit Directive and payment institutions that provide only payment initiation or account information services under the Payment Services Directive, the guidelines apply from 1 May 2019.
9. Irrespective of whether or not an authority pursuant to Article 4(2) of the EBA Regulation is addressed under paragraphs 2 and 3, where a Member State has designated more than one authority in accordance with Article 5 of Directive 2014/17/EU and one of them is not an authority pursuant to Article 4(2) of the EBA Regulation, the authority pursuant to Article 4(2) of the EBA Regulation designated under Article 5 of Directive 2014/17/EU should, without prejudice to national arrangements adopted under Article 5(3) of Directive 2014/17/EU:
 - a) inform without delay the other designated authority of these guidelines and their date of application;
 - b) ask that authority in writing to consider applying the guidelines;

¹ 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.

- c) ask that authority in writing to inform either the EBA or the authority pursuant to Article 4(2) of the EBA Regulation within two months of the notification under subparagraph (a) whether it applies or intends to apply these guidelines; and
- d) where applicable, forward without delay to the EBA the information received under subparagraph (c).

Definitions

10. 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); and
- g. the Mortgage Credit Directive (MCD).

11. For the purposes of these guidelines only, the indicative definitions set out in the table below, which do not override equivalent definitions in national law, have been developed.

<i>firm(s)</i> ²	<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, or (iv) a payment service as defined in Article 4(3) of the PSD, or (v) issuing electronic money as defined in Article 2(2) of the EMD, or (vi) provision of credit agreement as defined in Article 4(3) of the MCD or credit intermediation activities as defined in Article 4(5) of the MCD:</p> <ul style="list-style-type: none"> • investment firms (as defined in Article 4(1)(1) of the 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 Article 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); • payment institutions (as defined in Article 4(4) of the PSD), including, in accordance with Article 33 of the PSD, exempted account information
-----------------------------	---

² Should additional EU Directives come into force that will bring new financial activities and/or financial institutions into the scope of action of an ESA, said ESA will consult on any extension of the applicability of the guidelines to these firms and activities.

	<p>service providers providing only the payment service as referred to in point (8) of Annex I of the PSD;</p> <ul style="list-style-type: none"> • electronic money institutions (as defined in Article 2(1) of the EMD); and • credit intermediaries and non-credit institution creditors (as defined in Article 4(5) and (10) of the MCD respectively).
<i>complaint</i>	<p>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; or (iv) a payment service as defined in Article 4(3) of the PSD, or (v) issuing electronic money as defined in Article 2(2) of the EMD; or (vi) credit agreement as defined in Article 4(3) of the MCD; or (vii) credit intermediation activities as defined in Article 4(5) of the MCD.</p>
<i>complainant</i>	<p>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.</p>

Guidelines on complaints-handling

<p>Guideline 1 – Complaints management policy</p> <p>1. Competent authorities should ensure that:</p> <ol style="list-style-type: none"> 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. This ‘complaints management policy’ is set out in a (written) document (e.g. as part of a ‘general (fair) treatment policy’). The ‘complaints management policy’ is made available to all relevant staff of the firm through an adequate internal channel.
<p>Guideline 2 – Complaints management function</p> <p>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.</p>
<p>Guideline 3 – Registration</p>

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.