



The European Federation of Insurance Intermediaries  
La Fédération européenne des intermédiaires d'assurances

## BIPAR RESPONSE

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

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*BIPAR, the European Federation of Insurance Intermediaries, is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 52 national associations, established in 32 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people. Founded in Paris in 1937, BIPAR headquarters were moved to Brussels in 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.*

## **I. BIPAR GENERAL COMMENTS**

BIPAR welcomes the opportunity provided by EBA and ESMA to comment on their draft guidelines for complaints handling for the securities and banking sectors.

Effective complaints handling in the securities and banking sectors is critical for the confidence and protection of consumers. Effective internal complaints handling is critical for credit/investment intermediaries and advisers in their relations with their clients. BIPAR therefore believes that it should be regarded, like in the insurance sector, as a high priority within investment firms and credit institutions. BIPAR supports any initiative aimed at reinforcing consumer confidence and protection across the European Union.

BIPAR understands that the draft EBA and ESMA Guidelines do concern complaints about activities carried out amongst others by large institutions such as investment firms, credit institutions but also by much smaller firms such as investment intermediaries and advisers (as they also fall under the definition of Article 4 (1) (1) of MIFID).

### **Right Scope?**

BIPAR believes that more clarity should be brought on the scope of EBA and ESMA guidelines. As currently drafted, they are not adapted to investment advisers and intermediaries that are mainly micro and SMEs. They would create important and heavy burdens that would neither be proportionate to the risks and size of investment advisers and intermediaries nor to the number of complaints received by these latter.

BIPAR therefore suggests the drafting of a different set of guidelines for investment advisers and intermediaries (EIOPA drafted two sets of guidelines for insurers and insurance intermediaries), that would allow to take into account their specificities – which a comprehensive regime (covering all operators) can't do.

Another option would be to add into the 7 proposed guidelines that competent authorities should ensure a proportionate regime when applying these guidelines that takes into account the nature and size of investment intermediaries and advisers.

BIPAR understands the need for consistency and compatibility between complaints handling systems for supervisory reasons but believes that investment advisers and intermediaries, mainly because of the size of most of them, can't structure and organise their internal complaints handling procedures in a similar way to big investment firms or credit institutions.

BIPAR proposes therefore that the following sentence is included in draft guidelines 1 to 7: ***“taking into account the nature and size of investment firms in light of the principle of proportionality”*** or ***“depending on the size and structure of the firm”***.

For example Guideline 3 on Complaints management function could read as follows:

***“Taking into account the nature and size of firms in light of the principle of proportionality, 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”***

## **QUESTION II: BIPAR COMMENTS ON ESMA AND EBA DRAFT GUIDELINES**

### **Draft GUIDELINES 2 to 8**

Competent authorities should respect the principle of proportionality. This principle should be clearly reflected in the guidelines. The majority of investment intermediaries/advisers are micro or small enterprises (one/man businesses or offices with 2 to 5 employees).

In this context, it is very important that one tries to obtain an optimal balance between the real contribution to consumer protection on the one hand and obligations required from investment advisers and intermediaries on the other hand. The administrative feasibility and the extra costs of such obligations should totally reflect the profile of the adviser or intermediary.

**Draft GUIDELINE 3**

The cost of the introduction of a possible electronic online secure register should be further assessed, particularly for small to medium sized firms as it is thought that it would not be in proportion with the benefits of introducing such a system.

**Draft GUIDELINE 4**

BIPAR believes that guideline 4 regarding reporting could prove to be administratively burdensome for small firms without adding any value to the supervision of national competent authorities.

**QUESTION III: DO YOU AGREE WITH THE ANALYSIS OF THE COST AND BENEFIT IMPACT OF THE PROPOSALS?**

It is important that ESMA and EBA draft guidelines are proportionate to the risks and the size of enterprises, and also to the number of complaints received by firms.

The aim of ESMA and EBA guidelines is to ensure that complaints are registered and in the failure of a dialogue, to make sure that the consumer is informed of other means of redress (ombudsman, ADR etc...). Each complaint is different. It is important that ESMA and EBA guidelines do not lead to a too strict and rigid system.