



INTERNATIONAL FINANCIAL  
DATA SERVICES

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ESMA – [sarah.raisin@esma.europa.eu](mailto:sarah.raisin@esma.europa.eu)

EBA – [Joint-committee@eba.europa.eu](mailto:Joint-committee@eba.europa.eu)

Dear Sir/Madam,

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

International Financial Data Services is recognised as a world-leading provider of outsourced administration and technology solutions to the financial services industry. IFDS services are provided to a wide range of global asset managers, wealth managers, platform providers, product manufacturers, insurers, and life companies on a business process outsourcing (BPO) and application service provision (ASP) basis.

We support more than 22.1 million investor and policy holder accounts for over 230 financial organisations across Asia-Pacific, Europe, and North America and employ in excess of 4,800 experienced individuals located throughout Canada, Ireland, Luxembourg and the United Kingdom. Given our position in the market, IFDS is pleased to comment on the ESMA/EBA Joint Committee Consultation Paper on draft guidelines for complaints-handling for the securities and banking sectors.

Should you wish to discuss any of our responses further please call me on 01268 444989. Alternatively please call David Devine, Compliance Technical Manager, on 01268 447621.

Yours sincerely,

C J Shelton Chartered FCSI

Risk & Compliance Director

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

We agree that imposing guidelines on complaints-handling upon national competent authorities (NCAs) and authorised firms across Europe in the same manner will assist in ensuring harmonisation of rules on complaints-handling across the European Union (EU).

An example of the inconsistency of the application of rules regarding complaints-handling by different NCAs is regarding who is deemed as an eligible complainant.

The UK Financial Conduct Authority (FCA) defines an eligible complainant as a person that is:

- (1) a consumer;
- (2) a micro-enterprise;
- (3) a charity which has an annual income of less than £1 million at the time the complainant refers the complaint to the respondent; or
- (4) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the complaint to the respondent.

This differs somewhat to who the Central Bank of Ireland (CBol) deems an eligible complainant. In its Consumer Code 2012, the CBol applies rules regarding complaint-handling to any matter where a Consumer expresses grievance or dissatisfaction, either orally or in writing, in connection with the provision or the offer of the provision of a product or service to a consumer by a regulated entity. A Consumer is defined as being any of the following:

- a) a person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (for the avoidance of doubt a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate); or
- b) incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than the said €3 million).

There are clear inconsistencies in the definition of eligible complaints between these two NCAs for example. A third NCA which defines an eligible complainant in a different manner again is the Commission de Surveillance du Secteur Financier (CSSF) within Luxembourg. The CSSF applies its rules to "any natural or legal person who has lodged a complaint with the [authorised firm]".

Each NCA, as mentioned above, is applying its own rules regarding to whom the rules apply in different ways. This is one clear example of inconsistency in the application of complaints-handling rules across the EU. To ensure consistency in approach across the EU, it would be advisable to adopt a standardised definition which is meaningful and ideally affords the greatest level of protection to investors. We therefore would recommend that the EU adopt the definition applied by the CSSF; however recognising that entities authorised by an NCA should be excluded.

On this basis an appropriate definition for an eligible complainant would be “any natural or legal person, excluding any legal person authorised by an NCA, who has lodged a complaint with an authorised firm”.

Another example of how NCAs are applying complaints-handling rules in different ways is the matter of regulatory reporting. The reporting of complaints by firms to local NCAs is inconsistent across the EU. Within the UK, the FCA requires firms to report to it on a bi-annual basis regarding the number of complaints that it has received from complainants. Whereas, the CBol and the CSSF apply different rules.

Under new rules that it is imposing upon firms, the CSSF will require firms that report to it, to provide a summary table compiling the complaints received by the firm on an annual basis, together with a summary report of actions taken with respect to those complaints. These regulatory reporting obligations go beyond that which the FCA imposes upon firms authorised within the UK. The CBol, on the other hand, currently does not require any firms authorised by it in Ireland to actually report any information to it regarding complaints. It is clear that the application of complaints-handling rules across the EU is inconsistent.

To ensure consistency in approach across the EU, it would be sensible to adopt a common approach to regulatory reporting. However, in order to adopt a common approach, it would be prudent to clarify how the data via such reporting is used and analysed. Once this is established, consideration can then be undertaken regarding the approach.

As shown above, imposing guidelines on complaints-handling upon competent authorities (NCAs) and authorised firms across Europe in a consistent manner, will assist in ensuring harmonisation of rules on complaints-handling across the European Union (EU) as well as minimising regulatory arbitrage. A harmonised approach would also assist global firms implementing a single policy rather than various policies across jurisdictions.

Q2. Please comment on each of the guidelines, clearly indicating the number of the guideline to which your comments relate.

Guideline 1 – We agree that all regulated firms should ensure that a “complaints management policy” is in place. As indicated in the ESMA and EBA consultation currently UCITS Management Companies, MiFID Investment Firms and AIF Management Companies are already obliged to ensure that such policies are in place. However, to ensure consistency of application a formal set of guidelines that are required to be followed by all regulated firms may assist in this matter.

Guideline 2 – We agree that all regulated firms should ensure that a “complaints management function” is in place. As to the comments, please refer to above as they are applicable.

Guideline 3 – We agree with the guideline that all regulated firms should record all complaints in an appropriate manner and ideally through a secure electronic mean.

Guideline 4 – We agree with the guideline that all regulated firms should be reporting to NCAs appropriately regarding complaints. Please refer to the response to question 1 regarding reporting, as there are issues that could be addressed regarding regulatory reporting to ensure that all regulated firms within the EU are reporting the same information in the same format using the same method. This will also minimise regulatory arbitrage.

Guideline 5 – We agree with the guideline that all regulated firms should analyse complaints-handling data that has been recorded. This will assist all firms in identifying trends early on in order that they can be remediated appropriately.

Guideline 6 – We agree with the guideline that all regulated firms should provide adequate and appropriate information when responding to complainants. This will assist all firms in ensuring that complaints are dealt with in an appropriate manner.

Guideline 7 – We agree with the guideline that all regulated firms should ensure that all complaints are investigated and dealt with appropriately.