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Launched in 1960, the European Banking Federation (EBF) is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

EBF response to the ESMA-EBA Joint Committee Consultation Paper on Draft Guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors

Main remarks

- The EBF welcomes the opportunity to comment on the draft guidelines. Effective complaints-handling policies can improve the relationship between the firms and the clients, as well as convey to the customers that their complaints and concerns are taken into consideration. Hence, EBF supports the proposals, which largely reflect the processes already in place in several Member States.
- In general, we would advise against overly detailed requirements to harmonise the firms' arrangements to handle complaints. The way complaints are managed in practice may differ between firms. For some firms it may be more efficient to have a network of complaints handling functions covering branches separately, while for others a single complaints function would be more appropriate.
- EBF feels that a distinction between client categories is missing. For instance, for purposes of MiFID, there is a clear distinction between complaints by retail clients and by other clients. As set forth in the consultation paper (paragraph 11a.ii.): "*Article 10 of the MiFID Implementing Directive 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".*" Therefore, the draft guidelines should establish a distinction between client categories for each relevant financial

sector firm, otherwise they would go beyond the relevant Directives and their implementing national legislation.

- Particular attention should be also given to the correlation of the draft guidelines with the current work at the European Parliament and the Council on the data protection legislation. The data protection regulation (once approved) is likely to considerably increase the level of protection of personal data, and set sanctions to all types of violations. Therefore, it is vital for the service providers to have a strong legal basis when collecting and submitting information of their customers. It should be further examined whether the draft guidelines provide the necessary legal basis.
- Furthermore, we believe that the concept of a complaint is currently too wide and vague. If any statement of dissatisfaction addressed to the firm is to be regarded as such, lot of unnecessary information will be included in the reporting, thus, rendering it dysfunctional and creating a heavy administrative burden for the firms. Therefore, we suggest that the concept be narrowed down in a clear and reasonable way.
- Similarly, under the current draft, the definitions allow for a complaint to be addressed by a person, even if he/she is not a client of the firm, as long as the service: (i) has been provided under MiFID, the UCITS Directive or the AIFMD; or (ii) is a banking service listed in Annex I to the CRD; or (iii) is a service of collective portfolio management under the UCITS Directive. We suggest the following definition, in line with the EIOPA guidelines: *“A **written** statement of dissatisfaction **regarding a behaviour or an omission**, addressed to a firm by a natural or legal person **clearly identifiable as a client**, 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 **he/she was provided with by that firm.**”*

Responses to questions

Q1: Do you agree that complaints-handling is an opportunity for further supervisory convergence? Please also state the reasons for your answer.

European banks support a consistent approach to complaints handling across the financial services sector as a key objective of the supervisory model. This will enable the development of uniform practices and procedures among financial services providers, as well as a transparent and consistent complaints model for use by consumers, which should encourage participation when issues arise in relation to financial services.

However, whilst a high level of consistency is certainly welcomed, the supervision of complaints-handling should take into account the differences across the various financial services. In this respect, banks should remain free to tailor complaint-handling procedures to specific business cases.

Q2: Please comment on each of the guidelines, clearly indicating the number of the guideline (there are 7 guidelines) to which your comments relate.

Guideline 1: Banks agree that a complaints management policy put in place by the firms is crucial in order to avoid the instigation of legal proceedings and the production of unnecessary expenses. It is also important that the complaints management policy is set out in a written document and conveyed to all relevant staff. However, banks strongly feel it would be more beneficial to leave the operational choices on how to structure the complaints management policy in each Member State to the national supervisor and the firms, taking into account the size and types of clients in each particular firm.

Guideline 2: The existence of a complaints management function, which enables complaints to be investigated fairly and possible conflict of interests to be identified and mitigated within the firms, is necessary in order to assist the competent authorities in the exercise of their supervisory powers. We believe that each firm should have the choice (rather than an obligation) to create a client ombudsman office with operational autonomy, so that it provides the client with a second, impartial analysis of the complaint.

In addition, the importance of setting national timing requirements (e.g. for the processing and response to a complaint) should be decided by the national competent authority, which should be able to intervene on the complaints-handling process if the firm does not provide the client with a response within the time frame.

Guideline 3: Whilst we agree that a record of complaints should be kept in order to ease communication with the competent authorities, nonetheless, we fear that the obligation to create and maintain centralised record of complaints would be overly costly and run against the principle of proportionality.

Guideline 4: This draft guideline broadly works towards supervisory convergence, however, the need for some of the obligations contained within is unclear. In particular, we are concerned about the costs related to the frequency of reporting required, as well as the definition of complaint, as mentioned above. The need for competent authorities to be able to review complaint procedures and - if relevant - request to be provided with the number of complaints received is clear. Given the fact though that complaints will be registered whether or not they are reasonable and proven to relate to a default, the number of complaints is not per se a relevant figure. Many clients choose not to complain to an ombudsman, but rather focus on their contractual partner and, in particular, their relevant investment advisor or other person within the financial services provider. In Member States where legislation requiring the reporting of retail

clients' complaints is in place, clients have reacted by enquiring whether their names are reported and have stressed that they would like to have their service provider deal with the complaints.

Therefore, we recommend that the draft guidelines focus on reporting upon request of the relevant competent authority, rather than set forth a regular reporting requirement to a competent authority or an ombudsman. There should be also no requirement to report cases that have already been reported by another party.

Guideline 5: We recognise the need for an obligation for the firms to analyse, on an on-going basis, the complaints-handling data collected directly, in order not only to identify the common factor of dissatisfaction between the complaints, but also to promptly correct some of the flagged issues. However, it should not be mandatory for firms to create a specialised department or a client ombudsman office to internally process the collected data. The creation of a specialised department would imply costs and the firms are the most competent to assess such costs and decide on the value of such department.

Guideline 6: Clients need to understand complaint procedures and, to this end, we agree in particular with the use of the firms' websites to provide general information on complaint procedures. Should clients wish for further information or an update on the process, they should always be provided with contact information and receive further information upon request. Any other general information does not seem feasible for a big organisation that is subject to various other legal requirements, not least of all, market practices and civil law requirements which may differ across different products and business lines. Therefore, we propose using a wording along the following lines:

"6. Competent authorities should ensure that firms:

- a) On request, provide written information regarding their complaints-handling process.*
- b) Publish details of their complaints-handling process in an easily accessible manner, for example, via the firm's website.*

[...]

- d) Keep the complainant informed about further handling of the complaint."*

Guideline 7: EBF agrees that, following a complaint, firms should gather and investigate relevant facts, in order not only to fully assess the issue but also to substantiate their response. More importantly, the clients must be able to fully comprehend the response given to their complaint, especially when their demand was not fully satisfied.

As regards draft guideline 7(c), we believe that there should not be any fixed timeframe for dealing with a complaint. Complaints vary in nature and often refer to complex issues which date back in time as the case may be. Therefore, a response within a reasonable timeframe without any unnecessary delay seems the most sensible way to proceed.

Q3: Do you agree with the analysis of the cost and benefit impact of the proposals?

In Member States where firms' complaints-handling procedures are already in place, few additional costs would be associated with the implementation of the draft guidelines. This does not seem to be the case in Member States where no such regulation has been enacted. For those Member States, the cost-benefit analysis underestimates the possible costs the draft guidelines would cause, due to the reorganisation requirements, the definition of the procedures and education. Most costs would, however, result from reporting requirements in a uniform and detailed form. Besides, when considering the costs associated with implementation, the draft guidelines could perhaps require from the national competent authorities to analyse the collected data and to provide the results of this analysis to the banks. By placing this obligation with the authorities, there would be a more balanced approach to the cost-benefit evaluation.

