

Germany: Minimum Requirements to the Complaints Treatment by Insurance Undertakings – Specifications made by the German Regulator BaFin

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Introduction

The German Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, “**BaFin**”) on 20 September 2013 has issued a general decree (the “**Decree**”) regarding Complaints-Handling by Insurance Undertakings¹, thus implementing the respective Guidelines issued by the European Insurance and Occupational Pensions Authority, EIOPA, the European regulator, which were issued in June 2012.

Besides the Decree, BaFin has issued an explanatory circular no. 3/2013(VA) (the “**Circular**”)² titled “Minimum Requirements to the Complaints Treatment by Insurance Undertakings” (the “**Minimum Requirements**”). In this Circular BaFin specifies the orders and explains certain issues in particular with regard to the organisation of the complaints handling process.

The Decree

The Decree contains two orders which have to be complied with by the insurance undertakings to which the Decree is addressed:

1. Insurance undertakings have to install a complaints management function which is supposed to lawfully and fairly examine complaints and to identify and avoid at best and to manage conflicts of interest.
2. Insurance undertakings have to submit to BaFin annually, by 1 March of each year a complaints report regarding the preceding year in writing or via the MVP notification platform (online). The complaints report shall contain at least the following:
 - (a) The definition of “complaint” and “complainant” which underlie the report.
 - (b) The number of complaints (in total and itemised by class of insurance: life (divided between contracts with and without guarantees), health, motor, accident, liability, defence, building/domestic, other classes) and – in summarised form – state and length of the process.
 - (c) An overview on the various reasons for complaints indicating the number of cases.
 - (d) Comments in respect of the number of complaints which in the respective reference period have lead to an at least partially positive result for the complainant.

Pursuant to the Decree it applies to

- all direct insurance undertakings with seat in Germany;
- direct insurance undertakings with seat in a member state of the European Union (“**EU**”) and/or the European Economic Area (“**EEA**”) which offer their products in Germany by freedom of services or via a branch; and
- direct insurance undertakings with seat outside the EU/EEA which have a branch in Germany.

The decree does not apply to pension pools, pension funds and reinsurers. However, BaFin states that even if the scope of the Decree is not established, insurance undertakings should always respond appropriately to complaints. In any event, BaFin points out that these orders also apply if an insurance undertaking has outsourced the complaints handling.

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¹ The English version of the Decree is available under http://www.bafin.de/SharedDocs/Aufsichtsrecht/EN/Verfuegung/vf_130920_beschwerdebearbeitung_va_en.html.

² The English version of the Circular is available under http://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Rundschreiben/rs_1303_mindestanforderungenbeschwerdebearbeitung_va_en.html.

Apart from the orders the Decree only contains the reasons why BaFin has issued the Decree. In essence, BaFin refers to the EIOPA Guidelines.

The Minimum Requirements

The minimum requirements are set out in eight parts in the five-page Circular: General/Definitions, Internal Guidelines, Complaints Management Function, Registration, Information, Complaints Analysis, Provision of Information, and Process re the Answering of Complaints. The following shall provide a brief summary of the Minimum Requirements.

At this point it can already be noted that the Minimum Requirements do not constitute law binding for the insurance undertakings, but set out the principles and standards which BaFin will apply when assessing whether an insurance undertaking has complied with the orders. Each insurance undertaking is responsible to set up an organisation which provides adequate complaints handling.

- The Circular provides for a definition of “complaint” and “complainant”:
 - “Complaint” is any dissatisfaction regarding an insurance contract of service expressed by a person vis-à-vis an insurance undertaking. This includes complaints in connection to intermediaries. Complaints handling has to be seen separate from the claims handling. A complaint not necessarily has to include the word “complaint”.
 - “Complainant” is any person that potentially may claim from an insurance undertaking to assess his or her complaint and which has submitted a complaint, e.g. a (potential) policyholder, insured person, beneficiary, or damaged third party.

While insurance undertakings should take these definitions as basis for their own complaints handling, the orders provide that in the annual complaints report the insurer shall set out its own definition of these terms. In any event, insurance undertakings would do well if they adopted these definitions as minimum standard in their own complaints handling process.

- The Circular requires insurance undertakings to implement written internal guidelines to handle complaints which have to be issued by the management who are also responsible for the implementation and monitoring of the application thereof. The internal guidelines shall provide
 - a period of time in which a complaint should be handled;
 - standards for legally correct and fair treatment of the complainant;
 - requirements for observance of data protection provisions;
 - specification of how to identify, at best avoid and manage conflicts of interest; and
 - complaints to be handled swift, legally correct, fair, efficient and by applying the same standards.

- The internal guidelines shall provide training to the complaints handling persons.

The Minimum Requirements bring the complaints handling to the heart of the management of insurance undertakings making the board responsible for the implementation of the guidelines as well as the Complaints Management Function (see below).

- Main part of the circular is that a Complaints Management Function has to be installed. At least one experienced person shall be chosen which is responsible for the orderly performance of its tasks within the complaints department and which shall be implemented directly under the management. The insurance undertakings are free to organise this centralised or decentralised with the exception of the required analysis (see below) which may only be performed centrally.

BaFin states that the Complaints Management Function is responsible for ensuring compliance with internal complaints management policy, regardless of management board responsibility in this regard. Consequently, management remains responsible for the complaints handling as it is responsible to implement an orderly business organisation (see Sec. 64a German Insurance Supervision Act – *Versicherungsaufsichtsgesetz, VAG*).

- Insurance undertakings have to register the complaints received. In particular the following issues shall be recorded:
 - Subject matter of the complaint and class of insurance;
 - Reference data of the complainant;
 - Date of receipt and state of treatment of complaint; and

- Result of the complaint handling.

The additional administrative burden imposed on insurance undertakings by having to register the complaints received may not be too heavy. However, even where such registers already are in place, these would have to be aligned to the standards set out above.

- As ordered in the Decree, the insurance undertakings have to inform BaFin on an annual basis about the complaints handling. BaFin at this point states that it expects insurance undertakings to include complaints made to or vis-à-vis their tied agents in this annual report.

This new administrative measure must be complied with on an annual basis. While the general framework of the report may be based on a template, the actual content (see order no. 2 of the Decree) may have to show in some detail the complaints handling of the insurance undertaking. It has to be noted that the complaints report has to be submitted to BaFin by 1 March of each year with respect to the complaints received in the preceding calendar year. The first report is due on 1 March 2015 with respect to the year 2014. BaFin states that insurance undertakings are also expected to use their influence to obtain knowledge of complaints lodged with their tied agents within the meaning of section 34d (4) of the Industrial Code (*Gewerbeordnung – GewO*), which they should also enter into their own internal complaints system and of which they are also to notify BaFin.

- Insurance undertakings are obliged to analyse the complaints received in order to secure that repeated or systematic problems as well as potentially legal or operational risks are made out and corrected.

BaFin expects that the analysis refers in particular to the identification and analysis of the background of each individual complaint in order to determine the root causes common to certain types of complaint. Additionally, it shall be considered whether such root causes may also affect other processes or products, including those not directly complained of and the analysis shall correct, where reasonable to do so, such root causes.

- Insurance undertakings have to provide information to the complainant, including information on the receipt of the complaint, the status of the complaint handling and detailed information on how customers can submit complaints. The information has to be given in some detail.

While the correspondence with the complainant should be matter of course, the level of detail expected by BaFin may impose further administrative burden on the insurance undertaking.

- Finally, BaFin lists four steps which shall be observed during the procedure of complaints handling:
 - Gathering and assessment of means of evidence and information;
 - Communicate in clear and unambiguous language;
 - Respond without unnecessary delay; and
 - Explain the decision if it is not fully in line with the claim of the complainant.

Conclusion

By the implementation of the complaints handling guidelines issued by EIOPA insurance undertakings active in Germany face additional administrative burden. It can be assumed that insurers already have a complaints department and respective internal processes should be in place. However, in particular the implementation of the Complaints Handling Function on the level of management (see Sec. 64a VAG) puts this function in the spotlight of the board of insurance undertakings. The establishment of the Complaints Management Function in accordance with the provisions set out by BaFin will most likely lead to considerable overhead and expenditure. This specifically applies to the annual complaints report to be issued to BaFin in which a relatively detailed summary of the complaints received in the previous year has to be made.