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## Final report

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on the application of the existing Joint Committee Guidelines on complaints-handling to authorities competent for supervising the new institutions under PSD2 and/or the MCD

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# 1. Abbreviations

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<b>ADR</b>	alternative dispute resolution
<b>AISP</b>	account information service provider
<b>EBA</b>	European Banking Authority
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>ESA</b>	European Supervisory Authority
<b>ESMA</b>	European Securities and Markets Authority
<b>JC</b>	Joint Committee
<b>MCD</b>	Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (the Mortgage Credit Directive)
<b>PISP</b>	payment initiation service provider
<b>PSD1</b>	Directive 2007/64/EC on payment services in the internal market (the Payment Services Directive)
<b>PSD2</b>	Directive (EU) 2015/2366 on payment services in the internal market (the revised Payment Services Directive)
<b>RAISP</b>	registered account information service provider, benefiting from an exemption under Article 33 of Directive (EU) 2015/2366

## 2. Executive summary

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In June 2014, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) adopted the Joint Committee (JC) Guidelines for complaints-handling for the securities and banking sectors<sup>1</sup>. These guidelines apply to authorities competent for supervising complaints-handling by firms in their jurisdiction, which in the banking sector include credit institutions, payment institutions and electronic money institutions.

In March 2016, the Mortgage Credit Directive (MCD) started to apply and introduced requirements for credit agreements offered by new types of actors, defined as ‘credit intermediaries’ and ‘creditors’, with the latter consisting of credit institutions and non-credit institution creditors. While credit institutions have always been within the scope of the JC Guidelines, credit intermediaries and non-credit institution creditors have not. To ensure that consumers are provided with the same level of protection for residential mortgages that they have purchased, irrespective of the type of firm, and taking into account that Articles 14 and 15 of the MCD require all creditors and credit intermediaries respectively to inform consumers about the procedure for submitting a complaint, the EBA has arrived at the view that it is appropriate to extend the scope of application of the JC Guidelines to authorities competent for supervising non-credit institution creditors and credit intermediaries under the MCD.

Similarly, in January 2018, the revised Payment Services Directive (PSD2) started to apply and added two new providers of payment services – payment initiation service providers (PISPs) and account information service providers (AISPs) – to the scope of the preceding Payment Services Directive (PSD1). Taking into account that the JC Guidelines already apply to the payment service providers under PSD1 (e.g. credit, payment and electronic money institutions), the EBA has arrived at the view that the JC Guidelines should also apply to these new providers. However, in the specific case of AISPs that provide only account information services, which PSD2 exempts from a number of requirements, the JC Guidelines can be made to apply to only security-related, not other types of, complaints.

Finally, taking into account that some AISPs, non-credit institution creditors and credit intermediaries are very small, comprising one or two persons only, and might therefore not be in a position to incorporate the requirements of the JC Guidelines with the same detail as larger institutions, the EBA has arrived at the view that competent authorities should apply the JC Guidelines in a proportionate manner, taking into account the nature, scale and complexity of the businesses of those institutions and the nature and range of the services they offer.

### Next steps

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether or not they comply with the guidelines will be two months after the publication of the translations. The guidelines will apply from 1 May 2019.

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<sup>1</sup> See: [www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-for-complaints-handling-for-the-securities-esma-and-banking-eba-sectors](http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-for-complaints-handling-for-the-securities-esma-and-banking-eba-sectors)

## 3. Background and rationale

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### 3.1. Background

1. In June 2012, the European Insurance and Occupational Pensions Authority (EIOPA) published its Guidelines on complaints-handling by insurance undertakings. In June 2014, ESMA and the EBA read across these guidelines to the investment and banking sectors respectively and adopted them as the JC Guidelines for complaints-handling for the securities and banking sectors<sup>2</sup>.
2. The JC Guidelines therefore represent an identical set of requirements for and ensure a consistent approach to complaints-handling across the banking, investment and insurance sectors. These guidelines are to the benefit of (i) consumers, who will be able to rely on the same approach irrespective of what type of product they have purchased and where they have purchased it within the EU, thereby improving consumer confidence in financial services; (ii) firms, some of which may sell products from more than one sector; and (iii) national competent authorities, which will have to oversee implementation of one set of guidelines in their respective jurisdictions.
3. The JC Guidelines apply to and cover the activities, legal entities and competent authorities defined in the following directives that fell into the scope of action of ESMA and the EBA:
  - 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); and
  - f) the E-Money Directive (EMD).
4. The JC Guidelines are addressed to authorities competent for supervising complaints-handling by firms in their jurisdictions. They are, therefore, applicable to complaints submitted by natural or legal persons to financial institutions of the following types that were within the scope of action of the EBA and ESMA:
  - a) investment firms (as defined in Article 4(1)(1) of the MiFID);

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<sup>2</sup> See: [www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-for-complaints-handling-for-the-securities-esma-and-banking-eba-sectors](http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-for-complaints-handling-for-the-securities-esma-and-banking-eba-sectors)

- b) 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);
  - c) external alternative investment fund managers (AIFMs; as defined in Article 5(1)(a) of the AIFMD) when providing services pursuant to Article 6(4) of the AIFMD;
  - d) credit institutions (as defined in Article 4(1) of the CRR);
  - e) payment institutions (as defined in Article 4(4) of the PSD); and
  - f) electronic money institutions (as defined in Article 2(1) of the EMD).
5. On 21 March 2016, 21 months after the application date of the JC Guidelines, the MCD (Directive 2014/17/EU) applied in the EU, laying down a common framework for agreements for credit for consumers secured by a mortgage or otherwise relating to residential immovable property. In so doing, the MCD introduced requirements for credit agreements offered by a new category of actors defined as ‘credit intermediaries’ and ‘creditors’, the latter of which consist of credit institutions and non-credit institution creditors.
6. Whereas credit institutions are financial institutions under Regulation (EU) No 1093/2010<sup>3</sup> (the EBA Regulation) and therefore within the scope of the JC Guidelines, non-credit institution creditors and credit intermediaries are not financial institutions within the meaning of the term defined in Article 4(1) of the EBA Regulation and consequently do not fall within the scope of application of the JC Guidelines. Moreover, while Article 1(2) of the EBA Regulation does not expressly refer to the MCD as one of the directives within the scope of action of the EBA, it prescribes that ‘the Authority shall act within the powers conferred by this Regulation and within the scope of, Directive ... and of any further legally binding Union act which confers tasks on the Authority ...’. Thus, power is conferred upon the EBA by the EBA Regulation and Level 1 acts that confer tasks to the EBA (among others, the MCD). Considering the above and to ensure that:
- consumers are provided with the same level of protection for the same product that they are purchasing (residential mortgage) irrespective of the provider with whom they conclude the credit agreement, and
  - all actors under the MCD that carry out the same activity (provision of residential mortgages or ancillary services for the conclusion of a credit agreement) face the same regulatory requirements,

the EBA concluded that it would be appropriate to apply the JC Guidelines to authorities competent for supervising non-credit institution creditors and credit intermediaries and to consult on this proposal.

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<sup>3</sup> 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 (OJ L 331, 15.12.2010, p.12).

7. Moreover, while assessing the applicability of the JC Guidelines on complaints-handling to non-credit institution creditors and credit intermediaries, the EBA took into account that Articles 14 and 15 of the MCD require these firms to inform consumers about the procedures for submitting a complaint.
8. Unlike the MCD, which defined altogether new service providers, PSD2 (Directive (EU) 2015/2366), which has applied since 13 January 2018, added to the previous scope under PSD1 two new payment services (payment initiation and account information services) and extended the scope of the already existing categories of payment service providers ('credit institutions', 'payment institutions' and 'electronic money institutions') to providers offering these services (PISPs and AISPs).
9. Given that PISPs and AISPs fall into the categories of payment service providers – 'credit institutions', 'payment institutions' and 'electronic money institutions' – as defined in PSD2, and as the JC Guidelines apply to authorities competent for supervising these firms already, AISPs and PISPs are covered by default by the JC Guidelines.
10. In the specific case of AISPs that provide only account information services and no other payment services, PSD2 exempts them from a number of requirements. However, in line with the provision of Article 33(2) of PSD2, these exempted AISPs are to be treated as payment institutions and therefore should also be covered by the JC Guidelines.
11. Taking into account that exempted AISPs under Article 33 of PSD2 need to be *registered* (unlike institutions that provide account information services and other payment services, which are not exempted and therefore need to be *authorised*), this final report refers to them as registered AISPs (RAISPs). This will also allow them to be distinguished from other institutions that are authorised to provide account information services, such as credit institutions, payment institutions and electronic money institutions.
12. For reasons of transparency, to adhere to the principle of good regulatory practice and given that RAISPs are exempted from a number of provisions under PSD2, the EBA arrived at the view that it should properly assess whether or not there are any grounds on which PISPs and AISPs that provide only payment initiation services or account information services respectively should be, or have to be, exempted from the scope of the JC Guidelines, and to consult on the conclusions drawn.
13. The need to consult on the assessment of the applicability of the JC Guidelines to authorities competent for supervising complaints-handling by the new actors under the MCD and PSD2 was also confirmed further by the explicit caveat provided in a footnote to the definition of 'firms' in the JC Guidelines, which states the following: 'Should additional EU Directives come into force that will bring new financial activities and/or financial institutions into the scope of action of an European Supervisory Authority (ESA), said ESA will consult on any extension of the applicability of the guidelines to these firms and activities'.

14. Subsequently, the EBA published a Consultation Paper on the application of the JC Guidelines on complaints-handling to the new institutions under PSD2 and the MCD in March 2018 for a three-month consultation period, which closed on 27 May 2018. In the Consultation Paper, the EBA arrived at the view that the scope of the guidelines should be extended to authorities competent for supervising complaints-handling by PISPs that provide payment initiation services only and RAISPs under PSD2 and/or by non-credit institution creditors and credit intermediaries under the MCD.
15. The EBA also concluded that, to ensure the same level of consumer protection and a level playing field for financial institutions, the JC Guidelines on complaints handling should apply to financial institutions that are natural persons and that no financial institutions should be exempted from the application of the guidelines.
16. In addition, the EBA decided to retain the general proportionality approach embedded in the JC Guidelines by requiring competent authorities to apply the guidelines taking into account the nature, scale and complexity of the businesses of financial institutions and the nature and range of the services and products they provide.
17. The EBA received six responses to the consultation – three from industry associations, two from credit institutions and one from a national body responsible for credit intermediaries. The large majority of the respondents supported the proposed extension of the scope of the JC Guidelines on complaints-handling to authorities competent for supervising PISPs, RAISPs, non-credit institution creditors and credit intermediaries in their jurisdictions and the rationale provided by the EBA. The feedback table in section 5.2 (pages 16 to 19) provides an exhaustive list of all the issues raised by the respondents and the corresponding analysis by the EBA. The Rationale section below summarises the key issues raised by the respondents.

## 3.2. Rationale

### **Credit intermediaries acting exclusively on behalf of creditors**

18. While the majority of the respondents supported the application of the JC Guidelines on complaints-handling to credit intermediaries under the MCD, one respondent was of the view that credit intermediaries should not be subject to the requirements of the guidelines. This respondent argued that: (i) credit intermediaries conduct their business on behalf of creditors, as tied agents; (ii) consumers can rely on the complaints-handling procedures of the creditor; and (iii) consumers are already provided with the right to file complaints under Articles 14 and 15 of the MCD.
19. The EBA would like to point out that the JC Guidelines on complaints-handling were developed to provide a consistent approach for handling complaints across the banking, insurance and investment sectors, as well as to provide a consistent and clear regulatory framework for financial institutions for handling complaints. The application of the guidelines to authorities competent for supervising credit intermediaries and creditors is aimed at ensuring efficient and effective supervisory practices under the MCD in a common, uniform and consistent way.



20. Moreover, it should be noted that the JC Guidelines were drafted in a way that should ensure that consumers can rely on procedures for effective treatment of their complaints regardless of the type of financial institution they purchase a product or service from, and allow them to build trust with the respective institution.
21. Taking into account the above and that the majority of the respondents supported the application of the JC Guidelines on complaints-handling to credit intermediaries, the EBA has concluded that the guidelines should be extended to authorities competent for supervising complaints-handling by all credit intermediaries.
22. With regard to the suggestion to exclude credit intermediaries that are tied to, or work exclusively for, one creditor from the application of the JC Guidelines on complaints-handling, it should be noted that Articles 14 and 15 of the MCD apply to all credit intermediaries and, therefore, they are obliged to inform consumers about the procedure for submitting a complaint.
23. However, the EBA is of the view that credit intermediaries that are tied to, or work exclusively for, one creditor can themselves handle complaints or rely on the complaints-handling procedure of the creditor, as long as said procedure is compliant with the JC Guidelines and covers all aspects of the activities of credit intermediaries. This should ensure the same level of consumer protection.

#### **Credit intermediaries that are sole traders**

24. The majority of the respondents were of the view that the JC Guidelines on complaints-handling should apply to RAISPs, non-credit institution creditors and credit intermediaries that are natural persons, and that those institutions should not benefit from specific proportionality requirements or partial exemption from the guidelines.
25. However, one respondent was of the view that the requirements of the JC Guidelines are disproportionate for credit intermediaries that are sole traders and suggested that proportionate requirements should be introduced in the guidelines for both credit intermediaries that are sole traders and credit intermediaries that are tied agents. In the view of that respondent, the requirements of the guidelines are tailored too much to large institutions and that small credit intermediaries will not be in a position to meet the requirements of the guidelines and will face high administrative costs to incorporate them in their internal practices and procedures.
26. Having assessed this concern, the EBA would like to clarify that while developing the JC Guidelines on complaints-handling, the ESAs intended to capture all financial institutions in their remit, including small institutions. In support of this, the EBA would like to point out that waived payment institutions under Article 26 of PSD1, which could also be natural persons, are covered in the existing JC Guidelines on complaints-handling.
27. In addition, restricting the application of the JC Guidelines on complaints-handling to legal persons only could lead to distortions in the market and, consequently, different protection levels for consumers. Moreover, consumers might not even be aware whether or not a particular service is

offered by a natural person or a larger institution and should therefore be able to expect the same level of protection.

28. With regard to the above, the EBA considers that the objective of consumer protection should be of utmost importance to all market participants and that a non-harmonised approach to handling complaints related to specific financial products or services could diminish users' confidence in that activity. In relation to that, the EBA is of the view that (i) financial institutions offering identical products and services should be subject to the same requirements and (ii) to ensure efficient protection of consumers, requirements should focus on the risks associated with the respective financial products and services offered, irrespective of whether they are offered by a natural or a legal person.
29. It should also be noted that the JC Guidelines on complaints-handling introduce high-level requirements that do not prescribe any specific organisational approach or technological solution. Therefore, compliance with their requirements should not be particularly onerous and should not put sole traders in a disadvantageous position.
30. Finally, a general principle of proportionality is embedded in the existing JC Guidelines on complaints-handling, which allows competent authorities – to whom the JC Guidelines are addressed – to apply them in a proportionate manner, taking into account the nature, scale and complexity of the business and organisation of the different financial institutions as well as the nature and range of the products and services they provide. The introduction of proportionality based only on the size of a firm could put consumers at risk and undermine their trust in the financial system.
31. With regard to the above, the EBA decided to retain the approach taken in the Consultation Paper by (i) applying the JC Guidelines on complaints-handling to credit intermediaries that are natural persons and (ii) not exempting credit intermediaries from any of the requirements of the guidelines.

## 4. Implementation

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### Date of application

32. The scope of application of the JC Guidelines extends from 1 May 2019 to authorities competent for supervising complaints-handling by those PISPs that provide only payment initiation services and AISPs under Article 33 of PSD2 and/or by non-credit institution creditors and credit intermediaries under the MCD.

## 5. Accompanying documents

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### 5.1. Cost-benefit analysis/impact assessment

#### Introduction

With these guidelines the EBA intends to comply with its duty under Article 16(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision, and to ensure the common, uniform and consistent application of Union Law.

Article 16(2) of the EBA Regulation provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of the guidelines it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options. This section presents an impact assessment with a cost-benefit analysis of the provisions included in the guidelines described in this Consultation Paper. Given the nature of the guidelines, the impact assessment is high level and qualitative in nature.

#### Problem definition and the baseline scenario

The core problem that the draft guidelines aim to address is the lack of consistency in the application of the regulatory rules related to handling consumer complaints across the banking, investment and insurance sectors. While the current framework under the JC Guidelines explicitly targets a set of entities<sup>4</sup>, other entities such as non-credit institution creditors and credit intermediaries providing comparable services under the MCD and which may cause similar consumer detriments are not covered in the same framework. Indeed, under the current regulatory framework credit institutions providing residential mortgage services are subject to the requirements of the JC Guidelines when they handle consumer complaints. However, this is currently not the case for non-credit institutions providing the same or comparable residential mortgage services. Similarly, credit institutions can provide ancillary services facilitating the conclusion of a credit agreement for a residential mortgage. If the credit institutions provide this service in-house then the potential complaints related to this service fall under the scope of the JC Guidelines, whereas if this service is provided by a credit intermediary then this activity falls outside the scope of the JC Guidelines.

Inconsistent regulatory treatment of consumer-handling practices in the banking, investment and insurance sectors may be detrimental to the EU internal market. Consumers and the services they receive may be subject to different rules although the risks associated with these services are similar. This may create gaps in consumer protection and may deteriorate consumer confidence in the sector. Similarly, firms operating in one or more of these sectors and providing consumer services of comparable risk are subject to different regulatory rules. This may then undermine the level playing field in the single market.

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<sup>4</sup> This set of firms comprises of investment firms, management companies and some investment companies, external alternative investment fund managers, credit institutions, payment institutions and electronic money institutions.

There are currently more than 50 000 credit intermediaries and non-credit institution creditors in the EU that do not fall under the scope of the JC Guidelines; this is approximately 85% of all financial institutions in the EU that are within the scope of action of the EBA<sup>5</sup>.

Currently, there are some competent authorities that have practices in place to harmonise complaints-handling procedures across the three financial sectors within their jurisdictions, including the new actors under PSD2 and the MCD, while in other Member States such practices do not exist. The cost of compliance associated with the implementation of these guidelines is expected to be higher for the latter.

## Objectives

The objective of these guidelines is to ensure the consistent application of regulatory rules for complaints-handling in all financial sectors and jurisdictions. For this purpose, they aim to ensure that complaints are handled by financial institutions under a harmonised framework that ensures consistency across these sectors and jurisdictions. This is expected to increase consumer confidence, strengthen supervisory practices and maintain a level playing field in the EU banking, investment and insurance sectors. Overall, the specific and general objectives of the guidelines are as follows.

### Specific objectives

- Consistent handling of consumer complaints across all relevant sectors (banking, investment and insurance).
- Harmonised treatment of consumer complaints in financial services across jurisdictions.
- Updating the regulatory framework to address new challenges in the EU banking sector (e.g. the introduction of the MCD and the revision of PSD1).

### General objectives

- Ensuring consistent and effective (risk-based) supervisory practices.
- Contributing to supervisory convergence across EU Member States.
- Increasing consumer protection and consumer confidence.
- Contributing to a level playing field in the EU.

## Assessment of the technical options

### Scope of the guidelines

Option 1a: status quo (i.e. no intervention).

Option 1b: extending the scope of the JC Guidelines.

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<sup>5</sup> The figures are a proxy and are based on an EBA survey as of the end of 2016.

Under the status quo, investment firms<sup>6</sup>, management companies<sup>7</sup>, investment companies that have not designated a management company<sup>8</sup>, external alternative investment fund managers when providing services pursuant to Article 6(4) of the AIFMD<sup>9</sup>, credit institutions<sup>10</sup>, and payment institutions<sup>11</sup> and electronic money institutions<sup>12</sup> fall under the scope of the JC Guidelines.

Under option 1a (no intervention), the risks related to the inconsistent application of the JC Guidelines when entities (and competent authorities) handle consumer complaints are expected to persist. Option 1b aims to extend the scope of the JC Guidelines to entities that are not directed under the JC Guidelines yet provide comparable services to those that are subject to JC complaints-handling rules. Precisely, these entities are non-credit institution creditors and credit intermediaries that operate within the scope of the MCD. In the specific case of PISPs and AISPs under PSD2, the JC Guidelines should, in principle, apply because of the dynamic cross-reference to ‘payment institutions’ and ‘Payment Services Directive’ in the JC Guidelines; but, as good regulatory practice, the EBA consulted on the extension to those providers. Given the legal background of the Level 1 texts, other entities that are included in the MCD and PSD2, such as credit institutions and payment service providers, are part of the status quo and are subject to the JC Guidelines even without any intervention.

The cost of compliance associated with the extension of the scope of the JC Guidelines to authorities competent for supervising non-credit institution creditors and credit intermediaries is expected to be small. In line with the provisions of the JC Guidelines, firms should apply a common and standardised procedure for handling consumer complaints. The costs associated with the implementation of these rules are mostly operational and in some cases one-off (i.e. in cases where entities are subject to similar rules). Similarly, for the competent authorities there would be operational costs associated with the monitoring of the disclosed information. The overall cost for the entities would depend on the current practice in place: the cost of compliance with the draft guidelines is expected to be lower in jurisdictions where the competent authorities have already extended the JC Guidelines to these entities or apply national rules similar to the content of the JC Guidelines.

The overall benefits of extending the scope of the JC Guidelines, such as higher consumer confidence and a higher degree of comparability across financial sectors, services and jurisdictions, are expected to outweigh the associated costs. As a result, extending the scope of the JC Guidelines (option 1b) is the preferred option.

### Proportionality and partial application

Option 2a: introducing specific proportionality criteria.

Option 2b: applying the general principle of proportionality.

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<sup>6</sup> As defined in Article 4(1)(1) of the MiFID.

<sup>7</sup> As defined in Article 2(1)(b) of the UCITS Directive.

<sup>8</sup> As referred to in Article 30 of the UCITS Directive.

<sup>9</sup> As defined in Article 5(1)(a) of the AIFMD.

<sup>10</sup> As defined in Article 4(1) of the CRR.

<sup>11</sup> As defined in Article 4(4) of the PSD.

<sup>12</sup> As defined in Article 2(1) of the EMD.

These options assess whether the current draft revision of the guidelines introduces a balance between the policy requirements and the characteristics of the institutions (i.e. whether or not the policy requirements for the institutions are appropriate and fair given a set of criteria) or whether they should introduce further specific criteria to apply the principle of proportionality.

In addition, the EBA assessed specifically the introduction of the partial application of the JC Guidelines to 'complaints management policy' and 'complaints management function' for credit intermediaries, non-credit institution creditors and RAISPs. For example, the relevant provisions under the JC Guidelines may require the internal (re)organisation of separate complaints management units to mitigate possible conflicts of interest. These rules may impose disproportionality large administrative burdens on small entities with significantly low-risk profiles.

The JC Guidelines account for proportionality and require competent authorities to apply the guidelines while taking into account the nature, scale and complexity of firms' businesses and the nature and range of the services they provide. In other words, the JC Guidelines aim to prevent disproportionately large (administrative and operational) costs for firms with respect to characteristics such as their size, internal organisation, and the nature, scope and complexity of their activities.

Based on the abovementioned arguments, the introduction of additional criteria is not expected to have additional benefits for the industry and for the regulatory framework. As a result, the current draft guidelines apply the general principle of proportionality in line with the JC Guidelines, i.e. the preferred option is option 2b.

## 5.2. Feedback on the public consultation

### Summary of the responses to the consultation and the EBA's analysis

No	Summary of responses received	EBA analysis	Amendments to the proposal
<b>Feedback on responses to question 1</b>			
1	<p>While the majority of the respondents supported the application of the Joint Committee (JC) Guidelines (GL) on complaints-handling to credit intermediaries under the Mortgage Credit Directive (MCD), one respondent was of the view that credit intermediaries should not be subject to the requirements of the GL.</p> <p>This respondent argued that (i) credit intermediaries conduct their business on behalf of creditors, as tied agents; (ii) consumers can rely on the complaints-handling procedures of the creditor; and (iii) consumers are already provided with the right to file complaints under Articles 14 and 15 of the MCD.</p>	<p>The EBA would like to point out that the JC GL on complaints-handling were developed to provide a consistent approach for handling complaints across the banking, insurance and investment sectors, as well as to provide a consistent and clear regulatory framework for firms for handling complaints. The application of the GL to authorities competent for supervising credit intermediaries and creditors is aimed at ensuring efficient and effective supervisory practices under the MCD in a common, uniform and consistent way. In this context, it is important to ensure that all actors under the MCD respect the same legal framework.</p> <p>Moreover, it should be noted that the GL were drafted in a way that should ensure that consumers can rely on procedures for effective treatment of their complaints regardless of the type of financial institution they purchase a product or service from, and allow them to build trust with the respective institution.</p> <p>Taking into account the above and that the majority of the respondents supported the application of the JC GL on complaints-handling to credit intermediaries, the EBA has concluded that the GL should be extended to authorities competent for supervising complaints-handling by credit intermediaries.</p> <p>With regard to the suggestion to exclude credit intermediaries that are tied to or work exclusively for one creditor from the application of the JC GL on complaints-handling, it should be noted that Articles 14 and 15 of the MCD apply to all credit intermediaries and, therefore, they are obliged to inform consumers about the procedure for submitting a complaint.</p> <p>However, the EBA is of the view that credit intermediaries that are tied to, or work exclusively for, one creditor can themselves handle complaints or rely on the complaints-handling procedure of the creditor as long as said procedure is compliant with the GL and covers all aspects of the activities of credit intermediaries. This should ensure the same level of consumer protection.</p> <p>As a result of the above, the EBA does not find merit in introducing any additional changes to the JC GL on complaints-handling.</p>	None
2	One respondent was of the view that the EBA should also include credit intermediaries under the Directive 2008/48/EC on	The EBA would like to highlight that, according to Regulation (EU) 1093/2010 (the ESA Regulation), the Consumer Credit Directive (CCD) is not within the scope of action of the EBA and, therefore, the EBA is not legally allowed to include the	None



No	Summary of responses received	EBA analysis	Amendments to the proposal
	consumer credit agreements (Consumer Credit Directive, or CCD) within the scope of application of the JC GL on complaints-handling.	CCD, and credit intermediaries under the CCD, within the scope of application of the JC GL on complaints-handling.	
<b>Feedback on responses to question 2</b>			
3	The respondents did not raise any concerns nor did they identify any issues with regard to the application of the JC GL on complaints-handling to payment initiation service providers under the revised Payment Service Directive (PSD2) that provide only payment initiation services.	The EBA welcomes the support from the respondents to the consultation.	None
<b>Feedback on responses to question 3</b>			
4	<p>While the respondents did not object to the application of the JC GL on complaints-handling to registered account information service providers (RAISPs) under PSD2 (providers benefiting from an exemption under Article 33 of PSD2), one respondent suggested that the GL should apply to RAISPs for all complaints related to Titles III and IV of PSD2 to ensure the same level of consumer protection, a level playing field between all payment service providers and the consistent application of the requirements of the GL. The respondent argues that, as such, complaints received by RAISPs will not be limited to security-related complaints and there is no reason for limiting the application of these GL to security-related complaints only.</p> <p>In support, said respondent refers to Article 52(7) and Article 101(1) of PSD2 as further justification for their proposal. Article 52(7) of PSD2 prescribes that payment service users should be provided with information on redress, including dispute resolution procedures. Article 101(1) of PSD2</p>	<p>The EBA would like to stress that Article 33(2) of PSD2 explicitly exempts RAISPs from the application of, among other provisions of PSD2, Articles 101 and 102 of PSD2 on dispute resolution and alternative dispute resolution (ADR) procedures. This means that RAISPs are exempted from the requirements to:</p> <ul style="list-style-type: none"> <li>a) apply adequate and effective complaint resolution procedures for the settlement of complaints of payment service users concerning the rights and obligations under Titles III and IV of PSD2 (Article 101(1) of PSD2); and</li> <li>b) inform the payment service user about at least one ADR entity that is competent to deal with disputes concerning the rights and obligations arising under Titles III and IV of PSD2.</li> </ul> <p>On the other hand, Article 5(1)(f) of PSD2, which in accordance with Article 33(1) of PSD2 applies to RAISPs, requires applicants to provide, among other information during the authorisation/registration procedure, ‘a description of the procedure in place to monitor, handle and follow up a security incident and security related customer complaints’. This means that, despite the exemption in Article 33(2) of PSD2, RAISPs should have in place customer complaints procedures, albeit limited to security-related complaints. Competent authorities (CAs) should require from RAISPs to align the security-related complaints procedures with the provisions of the JC GL on complaints-handling.</p> <p>With regard to the reference to Article 52(7) of PSD2, which specifies the information that should be provided to the payment service user with regard to redress, the EBA would like to highlight that this is a requirement for respective pre-contractual information and does not therefore imply that RAISPs are obliged to set up a complaints procedure.</p>	None

No	Summary of responses received	EBA analysis	Amendments to the proposal
	<p>requires Member States to ensure that payment service providers put in place and apply adequate and effective complaint resolution procedures for the settlement of complaints of payment service users concerning the rights and obligations arising under Titles III and IV of PSD2 and shall monitor their performance in that regard.</p>	<p>With regard to the above, the EBA is of the view that it should not introduce any additional changes to the GL.</p> <p>Finally, the EBA agrees that it is possible that RAISPs will receive, in addition to security-related complaints, other types of complaints, including complaints related to the rights and obligations arising under Title III of PSD2. Explicitly for that reason, the EBA clarified in the Consultation paper that it would welcome an approach by CAs where they encourage RAISPs to apply the JC GL to all types of complaints they receive, not only to security-related complaints, to ensure a consistent treatment of consumer complaints, provided that CAs are in a position to do so.</p>	
<b>Feedback on responses to question 4</b>			
5	<p>While the majority of the respondents agreed that the JC GL on complaints-handling should apply to RAISPs, non-credit institution creditors and credit intermediaries that are natural persons, one respondent was of the view that the requirements of the GL are disproportionate for credit intermediaries that are natural persons.</p> <p>In the view of that respondent, the requirements of the GL are tailored too much to large institutions and that sole traders will not be in a position to meet these requirements and will face high administrative costs to incorporate them in their internal practices and procedures.</p>	<p>Having assessed this concern, the EBA is of the view that the definition of the term ‘firm’ in the existing JC GL on complaints-handling is not limited to legal entities only but refers to financial institutions in general, including those who are natural persons. The EBA would like to emphasise that during the development of these GL, the intention of the European supervisory authorities was to capture all firms in their remit, including small financial institutions.</p> <p>In support of the above, it should be noted that waived payment institutions under Article 26 of PSD1, which could also be natural persons, are treated by the Directive as payment institutions and are covered in the existing JC GL on complaints-handling.</p> <p>Moreover, restricting the application of the JC GL on complaints-handling to legal persons only could lead to distortions in the market and, consequently, different protection levels to consumers. In addition, consumers might not even be aware whether or not a particular service is offered by a natural person or a larger institution and should therefore be able to expect the same level of protection.</p> <p>Furthermore, the EBA is of the view that financial institutions offering identical products and services should be subject to the same requirements and that, to ensure efficient protection of consumers, requirements should focus on the risks associated with the respective financial products and services offered, irrespective of whether they are offered by a natural or legal person.</p> <p>Finally, the JC GL on complaints-handling introduce high-level requirements that do not prescribe any specific organisational approaches or technological solutions. Therefore, compliance with their requirements should not be particularly onerous and should not put natural persons in a disadvantageous position.</p>	

No	Summary of responses received	EBA analysis	Amendments to the proposal
		Taking into account the above and that the majority of the respondents supported the application of the GL to natural persons, the EBA is of the view that natural persons should not by default benefit from lighter requirements regarding their complaints procedures to those of larger institutions.	
<b>Feedback on responses to question 5</b>			
6	While the majority of the respondents were of the view that AISPs and credit intermediaries should not benefit from specific proportionality requirements or partial exemption of the JC GL on complaints-handling, one of the respondents was of the view that proportionality should be explicitly introduced in the GL both in the context of natural persons and tied agents.	<p>The EBA would like to highlight that the principle of proportionality is already embedded in the existing JC GL on complaints-handling. This general principle allows CAs – to whom the GL are addressed – to apply them in a proportionate manner, taking into account the nature, scale and complexity of the business and organisation of the different firms as well as the nature and range of the products and services they provide.</p> <p>In addition to the above, the EBA agrees with the majority of the respondents, who consider that:</p> <ul style="list-style-type: none"> <li>a) the objective of consumer protection should be of utmost importance to all market participants and any proportionate application of the GL should not dilute that objective;</li> <li>b) supervisory requirements should focus on the risks associated with financial products and services offered, irrespective of the type of financial institution offering them; the introduction of proportionality based only on the size of a firm could put consumers at risk and undermine their trust in the financial system;</li> <li>c) compliance with these GL does not hinder the ability of any firm or individual to compete and would not put small financial institutions in a disadvantageous position;</li> <li>d) not providing a clear and harmonised approach for handling complaints for a specific financial product or service could diminish users’ confidence in that activity;</li> <li>e) the JC GL on complaints-handling introduce high-level requirements that do not impose any specific organisational approaches or technological solutions.</li> </ul> <p>With regard to the above, the EBA is of the view that the JC GL should retain their current general approach for applying the requirements in a proportionate manner.</p>	None

# Annex – Guidelines on complaints-handling for the securities and banking sectors

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## 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 Regulations<sup>13</sup>. 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](mailto:JCguidelines.complaintshandling@esma.europa.eu) and [compliance@eba.europa.eu](mailto: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;
  - 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

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<sup>13</sup> 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.

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> <sup>14</sup>	<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"> <li>• investment firms (as defined in Article 4(1)(1) of the MiFID);</li> <li>• 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);</li> <li>• external AIFMs (as defined in Article 5(1)(a) of the AIFMD) when providing services pursuant to Article 6(4) of the AIFMD;</li> <li>• credit institutions (as defined in Article 4(1) of the CRR);</li> <li>• payment institutions (as defined in Article 4(4) of the PSD), including, in accordance with Article 33 of the PSD, exempted account information service providers providing only the payment service as referred to in point (8) of Annex I of the PSD;</li> <li>• electronic money institutions (as defined in Article 2(1) of the EMD); and</li> <li>• credit intermediaries and non-credit institution creditors (as defined in Article 4(5) and (10) of the MCD respectively).</li> </ul>
<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</p>

<sup>14</sup> 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.

	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.
<i>complainant</i>	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.

## Guidelines on complaints-handling

<p><b>Guideline 1 – Complaints management policy</b></p> <p>1. Competent authorities should ensure that:</p> <ol style="list-style-type: none"> <li>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.</li> <li>This ‘complaints management policy’ is set out in a (written) document (e.g. as part of a ‘general (fair) treatment policy’).</li> <li>The ‘complaints management policy’ is made available to all relevant staff of the firm through an adequate internal channel.</li> </ol>
<p><b>Guideline 2 – Complaints management function</b></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><b>Guideline 3 – Registration</b></p> <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).</p>
<p><b>Guideline 4 – Reporting</b></p> <p>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.</p>

**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.