



Commissariat aux Assurances Regulation N° 19/03 relating to out-of-court complaint resolution

The Directorate of the Commissariat aux Assurances,

Having regard to Article 108bis of the Constitution;

Having regard to Article 2(1)c) and g) of the law of 7 December 2015 on the insurance sector, as amended;

Having regard to the opinion of the " comité consultatif de la réglementation prudentielle ";

Decides:

Section 1 - Definitions

Art. 1 – Definitions

For the purpose of this regulation, the following definitions shall apply:

1. " CAA ": the Commissariat aux Assurances;
2. " request ": request for the out-of-court resolution of a complaint submitted to the CAA in accordance with this regulation;
3. " applicant ": any natural person who acts for purposes which are outside his/her commercial, industrial, artisanal or professional activity and has submitted a request to the CAA;
4. " procedure ": out-of-court complaint resolution procedure before the CAA;
5. " professional ": any natural or legal person underlying the prudential supervision by the CAA;
6. " complainant ": any natural person who acts for purposes which are outside his/her commercial, industrial, artisanal or professional activity and has filed a complaint with the professional;
7. " complaint ": complaint filed with a professional to recognise a right or to redress a harm.

Section 2 – Provisions relating to the procedure before the CAA

Art. 2 - Object and scope

The following text has been elaborated by the CAA for information purposes. The French version of this CAA Regulation is the only authentic version.

The purpose of this section is to define the rules applicable to the procedure for handling the requests submitted to the CAA as provided for in Article 2(1)g) of the law of 7 December 2015 on the insurance sector, as amended.

Art. 3 – Purpose and principles of the procedure

The procedure for handling the requests referred to in Article 2 aims at facilitating the resolution of complaints against professionals outside the judicial proceedings. The CAA may put an end to the procedure at any time if it notices that any of the parties uses the procedure for other purposes than the search for an amicable settlement of the complaint.

The procedure is not a mediation procedure within the meaning of the law of 24 February 2012 introducing the mediation in civil and commercial matters.

The intervention of the CAA is subject to the principles of impartiality, independence, transparency, expertise, effectiveness and fairness.

The reasoned conclusions of the CAA referred to in Article 5(6) shall not be binding on the parties.

Art. 4. – Admissibility of the requests

A request must be filed with the CAA under the conditions of Article 5.

A request is not admissible in the following cases:

- a) the complaint has previously been the subject of a court decision or arbitral award, in Luxembourg or abroad;
- b) the complaint is currently being examined by an arbitration tribunal or a court, in Luxembourg or abroad;
- c) the complaint has already been referred to another out-of-court complaint resolution body than the CAA, in Luxembourg or abroad;
- d) the request has not been submitted to the CAA within one year after that the applicant has filed a complaint with the professional;
- e) the complaint concerns the business policy of the professional;
- f) the complaint concerns a product or service other than insurance related;
- g) the request is unreasonable, frivolous or vexatious;
- h) the request has not been initiated by a policyholder, a beneficiary of an insurance contract, an insured or an injured third party in the context of a direct action against an insurance undertaking;
- i) the complaint filed with the professional and the request filed with the CAA differ in terms of their purposes and/or motivations.

Art. 5. - Procedure

(1) Prior complaint to the professional

The opening of the procedure is subject to the condition that the complaint has been previously dealt with by the relevant professional in accordance with Section 3.

In this respect, the complaint must have been previously sent in writing to the person responsible for complaints handling at the level of the management of the

The following text has been elaborated by the CAA for information purposes. The French version of this CAA Regulation is the only authentic version.

professional concerned by the complaint and the complainant shall not have received an answer or a satisfactory answer from that person within 90 days from the date at which the complaint was sent.

(2) *Referral to the CAA*

Where the complainant has not received an answer or a satisfactory answer within the period referred to in the preceding paragraph, he/she may file his/her request with the CAA within one year after he/she filed his/her complaint with the professional.

The request must be filed with the CAA in writing, by post, fax or email to the CAA (to the address/number available on the CAA website), or online via the CAA website. In order to facilitate the filing of a request, the CAA publishes a template on its website.

The request must be reasoned and supported in particular by the following documents:

- a) a detailed and chronological statement of the facts underlying the complaint and the steps already taken by the applicant;
- b) a copy of the prior complaint referred to in paragraph (1);
- c) either a copy of the answer to the prior complaint or the confirmation by the applicant that he/she did not receive an answer 90 days after he/she sent his/her prior complaint;
- d) a copy of the terms and conditions of the insurance contract and any addenda thereto;
- e) the statement of the applicant that he/she did not refer the matter to a court, an arbitrator or another out-of-court complaint resolution body, in Luxembourg or abroad;
- f) the agreement of the applicant with the request handling conditions of the CAA in its capacity as body responsible for the out-of-court resolution of requests;
- g) the express authorisation of the applicant allowing the CAA to transmit his request (including the attachments) as well as any future correspondence or information to the professional concerned by the request;
- h) a power of attorney in the event that a person acts on behalf of an applicant in accordance with paragraph (8),
- i) a copy of a valid ID document of the applicant.

The CAA may request the production of any other document or information it deems necessary to handle the request.

Upon reception of the request by the CAA, a written acknowledgement of receipt will be provided to the applicant. The written acknowledgement of receipt is not a statement on the admissibility of the request and will be provided to the applicant within a period which shall not exceed 10 business days from receipt of the request unless the reply itself is provided to the applicant within that period.

If the request is not admissible, the CAA shall provide within 3 weeks of reception of the request a detailed explanation in writing to the applicant and the professional concerned of the reasons why the CAA did not accept to deal with the dispute.

Where necessary documents or information are missing, the applicant will be informed and requested to provide such documents or information in the required

The following text has been elaborated by the CAA for information purposes. The French version of this CAA Regulation is the only authentic version.

form within a timeframe set by the CAA. If the applicant has not submitted the aforementioned documents or information within the specified timeframe, the CAA will inform the applicant that it is no longer acting on his/her request.

The CAA sends, within a period of 3 weeks, a written confirmation to the applicant when his/her file is considered admissible and complete.

(3) Languages

The request may be filed in Luxembourgish, German, French or English.

(4) Transmission by the CAA of the request to the professional

Where the CAA receives a request that meets all the conditions referred to in Article 4 and in paragraphs (1) to (3), it transmits a copy thereof to the professional, with the request to take position within a period up to 30 days starting from the date at which the file was sent to him. The CAA informs the applicant of such transmission.

If, based on the documents submitted, the CAA concludes that the request is obviously unfounded, it shall communicate its conclusion to the parties before the expiry of the abovementioned period in accordance with paragraph (6) without seeking a position from the professional.

(5) Analysis by the CAA of the file relating to the request

The analysis of the file relating to the request starts when the CAA is in possession of the position statement of the professional requested by the CAA from him.

While analysing the file relating to the request, the CAA may request, in accordance with paragraph (2), the professional and the applicant to provide additional information, documents or explanations and to take position on the facts or opinions as presented by the other party.

The parties are informed about their possibility, within a reasonable time, to receive from the CAA the arguments, evidence, documents and facts put forward by the other party as well as any statements and opinions made by third parties and to comment on, insofar as such information is not covered by the confidentiality rules provided for in Article 300 of the law of 7 December 2015 on the insurance sector, as amended.

(6) Reasoned conclusion of the CAA

Where the analysis of the file relating to the request is completed, the CAA addresses a conclusion letter to the parties, including the statement of reasons for the position it has taken. Where it concludes that the request is totally or partly justified, it asks the parties to contact each other to settle their dispute in light of the reasoned conclusion and to inform the CAA of the follow-up.

Where the CAA concludes that the positions of the parties are irreconcilable or unverifiable, it informs the parties thereof in writing.

The parties are informed that the conclusions reached by the CAA after the analysis of the request may be different from the order of a court applying legal provisions.

The parties are also informed that the reasoned conclusions of the CAA are not binding on the parties and that they are free, after a reasonable period of reflection, to accept or refuse to follow them. In the conclusion letter, the parties' attention is

The following text has been elaborated by the CAA for information purposes. The French version of this CAA Regulation is the only authentic version.

also drawn to the possibility to seek remedies through legal proceedings, in particular, if the parties do not reach an agreement after the CAA issued its reasoned conclusion.

(7) Duration of the procedure

With regard to the requests referred to in Article 2, the CAA shall issue a reasoned conclusion within 90 days.

The 90-day period begins when the CAA receives a complete request that meets the conditions of the last subparagraph of paragraph (2).

The 90-day period may be extended in case of highly complex files. In this event, the CAA shall inform the parties of the reasons for the extension of the period and the estimated additional duration of the period, as soon as possible and at the latest before the end of the 90-day period.

(8) Representation and assistance

The parties to the procedure may be represented or assisted by a third party at any stage for the procedure.

(9) Written procedure and retention of documents

The procedure shall be in writing. However, if the CAA deems it necessary for the examination of the file, it may convene one or several meetings with the parties and/or their representatives.

The parties must attach to their correspondence copies of the documents which are relevant for the examination of the request and keep the original versions of these documents.

(10) Closing of the procedure

The procedure ends:

- a) by sending a reasoned conclusion letter within the meaning of the first subparagraph of paragraph (6), or by sending a letter within the meaning of the second sub-paragraph of paragraph (6);
- b) by reaching an amicable settlement between the professional and the applicant during the procedure, which the CAA is informed of;
- c) in case of a written withdrawal of the applicant, which may occur at any time during the procedure and which must be notified to the other party and to the CAA within a reasonable period, in writing or by way of a durable medium;
- d) when the right on which the complaint is based is prescribed and where the professional claims that the time period for exercising that right has expired;
- e) when the complaint has been submitted to a Luxembourg or foreign court or arbitrator;
- f) when the complaint has been submitted to an out-of-court complaint resolution body other than the CAA in Luxembourg or abroad;

The following text has been elaborated by the CAA for information purposes. The French version of this CAA Regulation is the only authentic version.

- g) when the applicant does not provide the additional documents, information, explanations or positions requested by the CAA within the period set by the CAA, or when no period has been set by the CAA, within 45 days.

Art. 6. – Data protection

The CAA takes the necessary measures to ensure that the processing of personal data complies with the applicable rules on personal data protection laid down in the law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended.

Art. 7. - Confidentiality

The parties to the procedure before the CAA commit to maintain the confidentiality of the documents and communications exchanged during the procedure.

The agents within the CAA in charge of handling requests for the out-of-court resolution of complaints are bound by professional secrecy rules referred to in Article 7 of the law of 7 December 2015 on the insurance sector, as amended.

Art. 8. – Agents in charge of handling the requests

- (1) The agents within the CAA in charge of handling requests for the out-of-court resolution of complaints have the knowledge and skills required in this respect as well as a general understanding of law.
- (2) The person who has or may have a conflict of interest with one or more of the parties to the request shall notify the CAA directorate. The same shall apply if the person considers that his/her independence or impartiality may or could be challenged at any time during the procedure.
- (3) If in the context of the examination of a request, the agents find that a question of a prudential nature going beyond the framework of the request arises, they shall transmit the information required for this purpose internally and the CAA may follow up as part of its prudential supervision.

The follow-up by the CAA as part of its prudential supervision may not be disclosed to the parties to the request, due to CAA's professional secrecy rules.

The procedure goes on regardless of the evolution of any possible case of prudential supervision.

Art. 9. – Cost of the procedure

Out-of-court complaint resolution before the CAA is free of charge. Moreover, no charges will be reimbursed to the parties.

Art. 10. – Referral to the courts

The parties keep, at any time, the right to refer the subject of the complaint to the courts.

The following text has been elaborated by the CAA for information purposes. The French version of this CAA Regulation is the only authentic version.

Art. 11. – International cooperation

Within the context of the out-of-court resolution of cross-border complaints, the CAA cooperates with the competent foreign bodies in accordance with the laws and regulations governing this co-operation.

Art. 12. – Annual report

The annual report of the CAA describes its activities as regards the out-of-court resolution of complaints.

Section 3 – Provisions applicable to professionals

Art. 13. - Purpose

The purpose of this section is to specify certain obligations incumbent on professionals in relation to the handling of complaints.

Art. 14. - Complaint handling by professionals and disclosure requirements

- (1) Each professional established in Luxembourg shall communicate, before the conclusion of an insurance and brokerage contract, information on the out-of-court complaint resolution procedure specifying the role and powers of the CAA.

This information shall be clear, comprehensible and easily accessible on the professional's website, where available, and in the general conditions of the insurance or brokerage contract.

- (2) Each professional shall have a complaints management policy that is defined, endorsed and implemented by the executive management of the professional.

The complaints management policy shall be set out in a written document and formalised in an internal complaints resolution procedure made available to all relevant staff.

This procedure shall be efficient and transparent, in a view of the reasonable and prompt complaints handling in full compliance with the provisions of this regulation. It shall reflect the concern for objectivity and for ascertaining the truth.

It shall also enable the identification and mitigation of any potential conflicts of interests.

- (3) The professional shall ensure that each complaint as well as each measure taken is appropriately recorded in a centralised electronic register, including the date, the subject of the complaint and subsequent actions.

Moreover, the professional has to ensure that each complainant is informed of the name and contact details of the person in charge of his/her file.

- (4) When the complainant has not obtained an answer or a satisfactory answer at the level at which he/she submitted his/her complaint in the first instance, the internal procedure must give him/her the opportunity to raise the complaint up to the level of the executive management of the professional. In this respect, the professional must designate a person responsible at this level and provide the complainant with his contact details.

- (5) The person responsible at the level of the executive management shall be in charge of the implementation and the efficient functioning of a structure as well as the internal procedure for complaints handling referred to in paragraph (2). Subject to

The following text has been elaborated by the CAA for information purposes. The French version of this CAA Regulation is the only authentic version.

prior information to the CAA on the arrangements ensuring the full application of the provisions of this section, the person responsible at the level of the management may delegate the management of the complaints internally.

- (6) The professional must provide clear, precise and up-to-date information on their complaints handling procedure, including:
- (i) details on how to complain (type of information to be provided by the complainant, identity and contact details of the person or department to whom the complaint should be addressed in the first place, etc.);
 - (ii) the procedure that will be followed to handle the complaint (time when the professional will acknowledge receipt of thereof, indicative timetable for handling the complaint etc.).

The professionals shall publish details of their complaints resolution procedure in an easily accessible manner, for example in brochures, handouts, contract documents or via its website.

A written acknowledgement of receipt will be provided to the complainant within a period not exceeding 10 business days from receipt of the complaint, unless the answer itself is provided to the complainant within that period.

The professionals have to inform the complainants of the follow-up of their complaint.

The professionals shall:

- (i) seek to gather and investigate all relevant evidence and information on each complaint;
- (ii) seek to communicate in a simple and easily comprehensible language;
- (iii) provide an answer without undue delay and in any case within a period not exceeding 30 days from the date of receipt of the complaint to the date on which the response is sent to the complainant.

Where an answer could not be provided within this period, the professional must inform the complainant of the reasons for the delay and indicate the date on which his examination is likely to be achieved. In this case, the time limit for filing with the CAA, referred to in the second subparagraph of Article 5(2), shall be extended accordingly.

- (7) Where the complaints handling at the level of the responsible person referred to in paragraph (2) did not result in a satisfactory answer for the complainant, the professional must provide him/her with the information referred to in paragraph (1). This information shall be provided on paper or on another durable medium.
- (8) The proof of the existence and accuracy of the information provided and of the date on which it was provided, shall be the responsibility of the professional. Any contrary clause is considered abusive within the meaning of Article L. 211-2 of the Consumer Code.
- (9) The professionals should analyse the data relating to the complaints handling, on an ongoing basis, in order to enable the identification and treatment of any recurring or systemic problems, as well as any potential legal and operational risks, for example:
- (i) by analysing the reasons of individual complaints in order to identify the common origins of certain types of complaints;
 - (ii) by considering whether these origins may also affect other processes or products, including those to which the complaints do not relate directly; and

The following text has been elaborated by the CAA for information purposes. The French version of this CAA Regulation is the only authentic version.

(iii) by correcting these origins, where it is reasonable to do so.

Art 15. - Communication of information to the CAA

(1) The professional's internal procedure for complaints handling shall also cover the communication with the CAA within this framework in general as well as within the framework of the procedure before the CAA, as described, in particular, in the second section.

(2) The professionals are required to provide the CAA with an as comprehensive as possible answer within a period of 30 days of the CAA sending its request for additional information, documents or explanations and/or for a position on the facts or opinions as presented by the other party.

Where the professionals do not comply with the above mentioned period, the CAA may issue an injunction to provide the requested information.

(3) The responsible person referred to in Article 14(4) shall be required to communicate to the CAA, on an annual basis, a table containing the number of complaints registered by the professional, split by type of complaints, as well as a summary report of the complaints and the measures taken to deal with them.

To this end, the internal procedure of the professional shall organise the communication to the responsible person referred to in the preceding sub-paragraph of all the necessary data in respect of the complaints received.

Section 4 – General provisions

Art. 16. – Entry into force

The present regulation enters into force on the day following its publication in the Official Journal. Its provisions are applicable to any new request received by the CAA from the day of its entry into force.

Art. 17. - Publication

The present regulation will be published in the Official Journal and on the CAA website.

Luxembourg, 26 February 2019.

COMMISSARIAT AUX ASSURANCES

Claude WIRION

Director

Annick FELTEN

Member of the Directorate

Yves BAUSTERT

Member of the Directorate