



European Banking Industry Committee

European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB) European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

European Banking Authority

Brussels, 10 February 2015

Re: Product oversight and governance arrangements

Dear Sir/Madam,

The European Banking Industry Committee (EBiC) welcomes the opportunity to respond to the Consultation Paper on the proposal for Guidelines on Product Oversight and Governance (POG) arrangements for retail banking products.

Ultimately, the responsibility of contracting a financial agreement also lies with the consumer and we believe a balance should therefore be found between the responsibility of manufacturers and distributors on one hand and of consumers on the other to make the right choice adapted to their needs. In line with existing EU retail financial services legislation, consumers should be free to select products offered to them once they have been provided with adequate information and explanation from credit institutions. Also, sufficient flexibility should be provided for manufacturers to adapt to changing consumer features and expectations.

Particular consideration should be given to preserve innovation and consumers' access to financial services products within the Internal Market.

We wish to draw the attention of the European Banking Authority (EBA) to a number of general concerns of key importance for the EBiC members.

1. Existing EU legislation

As acknowledged by the EBA, numerous sources of EU legislation currently provide standards for the design and distribution of retail banking and financial products. For example, the following Directives have recently been adopted or are currently being implemented or are/have recently been reviewed:

- The Markets in Financial Instruments Directive¹ II(MIFID II)
- The Payment Accounts Directive²
- The Mortgage Credit Directive³
- The Consumer Credit Directive⁴
- The Proposal for a Payment Services Directive⁵
- The Proposal for a Regulation on interchange fees for card-based payment transactions⁶

Against this background, we do not necessarily see the added-value to introduce further standards for all retail products. Importantly, we think that consistency should be ensured between the work of the Authority and “level 1” regulation as well as the proportionality of standards with regard to product complexity and risks.

2. Scope

Many concepts used in the guidelines are especially of relevance to investment-type products. However, they do not match the characteristics of mass market products of fairly basic technical nature. For example, the identification of a target market makes sense when establishing an investor profile but is of little use when the product is designed to serve, by definition, a large market such as payment accounts. EBIC believes that “the stretching” of the investment product regulation to all retail banking products is simply not suitable. The introduction of such requirements would be particularly intrusive for standard retail banking products.

We feel that adding on a layer of standards may in fact be counter-productive unless sufficient flexibility is guaranteed. In particular, it is vital to ensure that market operators can swiftly respond to changing customer feature and/or expectation as well as the fast pace of innovation. We also think particular attention should be provided to the impact of these far-reaching standards on smaller firms and, in turn, competition.

“Product validation” processes are common features within credit and financial organisations. When developing new products, comprehensive studies of the relevant market are being conducted taking into account the needs and interest of customers anyway. This is key to ensure successful business. The introduction of a new product always incur high costs for the manufacturer including IT investments, training of staff, development of material, etc. It is therefore not in an institution’s interest to place a product on the market which does not correspond to customers' needs. In our view, in case of simple and commonly used products, the

¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance, 12.6.2014, OJEU L 173/349-496.

² Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features Text with EEA relevance, 28.8.2014, OJEU L 257/214-246.

³ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance, 28.2.2014, OJEU L 60/34-85.

⁴ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers, 22.5.2008, OJEU L 133/66.

⁵ Proposal for a Directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC, COM/2013/0547 final - 2013/0264 (COD).

⁶ Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card based payment transactions, COM/2013/0550 final- 2013/0265 (COD). The Proposal has been adopted very recently (agreement reached among the EU institutions on 17 December 2014).

implementation costs of the proposed POG arrangements will exceed the added-value for consumers. We believe such costs will necessarily have negative impacts on prices.

We understand that commonly used retail products such as payment accounts, basic payment facilities, savings deposits and credit transactions are part of the scope of the guidelines. We believe that the proposals for the establishment of POG arrangements are not necessarily adapted to all of these products that customers are fairly familiar with. A thorough product testing and approval should only be necessary in case of new products with a certain level of complexity being manufactured by the relevant institution.

The proportionality of requirements is central. National Competent Authorities (NCAs) and/or obliged entities should therefore be given sufficient discretion with regard to the application of these standards. In this context, it should be allowed to exclude simple products from POG requirements and proceedings.

The draft guidelines provide specific standards for manufacturers and distributors. We believe clarification is needed regarding the concept of distributor. We understand that the proposed definition aims at covering all types of individuals involved in the bringing of products to the market. However, it is unclear how this could apply in practice, in particular where design and distribution units are part of the same banking organisation.

We think the guidelines should distinguish between internal staff or intermediaries acting on behalf of a manufacturer on one hand and independent distributors acting on behalf of the consumer on the other. Manufacturers cannot be responsible for compliance with distribution standards of independent third-parties. Equally, it would not make sense for internal staff units or intermediaries acting under the full responsibility of manufacturers to develop their own specific arrangements.

3. Guidelines

a. Guideline 3 – Target market

We think that the obligation for the manufacturer to identify interests, objectives and characteristics of target market might create many difficulties in practice.

We think the introduction of such an obligation reflects an extremely conservative approach which may lead to discrimination on access to products within the Single Market and financial exclusion. Obligated entities will be required to deny access to a product/service to a customer who is not part of the “target market”. The compatibility of these standards with non-discrimination requirements should also be clarified.

We have reservations regarding the practical implication of this guideline. We are concerned that this may restrict consumer choice and go against his/her own interest which we think he/she has the right to determine himself/herself.

(3.2) The concept of “consumer interest” is very subjective and difficult to implement in practice. Though we agree that products should be created and distributed to respond to end users’ interest, this concept cannot be used as a standard to assess providers’ behavior. For example, if this concept may be implemented in the context of an advisory and personalised transaction, it may not be realistic for “execution-only” transactions.

(3.4) We think the suggestion that manufacturers should be prevented from developing or proposing too many product variants could have a detrimental impact for both consumers (whose choice would be reduced) and manufacturers. We think this contradicts the objective of a modern and responsible supervisory framework. Also, it is unclear who would be responsible to identify the appropriate number of product variants that can be offered. This would, in any case, be a very subjective decision.

(3.5) We think a general requirement to identify an unsuitable target market is a very restrictive approach which, in our view, will considerably restrict manufacturers' ability to adjust to diverse consumer profiles. We also believe this will restrict consumers' access to finance. We are strongly concerned by the limitative impact this will have on consumers' choice. Implementation of this recommendation will prove to be difficult in practice, in particular where staff members handle large product portfolios.

It is unclear how the identification of the market segments for which the product is considered likely not to meet consumer interests, objectives and characteristics will interact with existing 'suitability requirements' set out by NCAs.

We are concerned by an increasing liability and litigation risk stemming from the proposed guidelines. For example, a financial organisation may be convinced that it has targeted the 'right' product to the 'right' market, but, in the event of consumer default, the consumer may claim that this was not the case. The burden of proof would then be on the firm to demonstrate the contrary, in other words creating a situation of "probatio diabolica".

(3.6) EBIC strongly believes that the understanding of terms and conditions are essential and, in particular, the understanding of the basic characteristics and charges of a product. However we do not believe that such requirement to assess a consumer's degree of financial capability is either possible or desirable.

The guideline is vague as it is unclear whether financial capability refers to skills or motivation. Also, it seems to ignore the many other factors influencing consumer behavior (e.g. cultural, social, personal, psychological). In fact, the instrumental impact of the latter factors on consumer behavior was one of the key conclusions of the European Supervisory Authorities (ESAs) joint consumer protection day on 4 June 2014.

The guideline implies that the market is characterised by the presence of standardised groups of people. In reality, every market is made up of different individuals with different financial capabilities and financial means/assets. In the context of credit transactions, we question what the value is of the assessment of average financial capability of a target market compared to a full creditworthiness assessment carried out for each individual candidate borrower, based on his/her individual circumstances when applying for a loan, which is common practice.

b. Guideline 4 - Product testing

Retail banking products are already tested before they are being proposed to the market. This is common practice when the product presents a particular risk (including potential financial loss for the client). While product testing is undoubtedly necessary to achieve sustainable success, the introduction of a formal obligation for product testing for each and every product - which for instance also includes new editions of existing products - misses the mark. We firmly believe that such an extensive scope will negatively impact on prices and the pace of innovation as it will significantly increase Time-To-Market (TTM).

The proposal to implement additional mandatory product testing for all kinds of products regardless of the product's complexity would, in our opinion, create unnecessary costs exceeding the added-value for customers and inhibit new market operators.

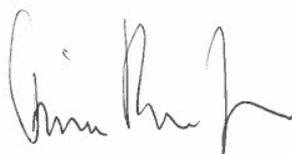
EBIC remains at the disposal of the Authority to discuss any points referred to in this document or respond to any questions.

Sincerely yours,



Jean-François PONS

EBIC Chairman



Tineke Borch JACOBSEN

Chair of the EBIC Working Group on Mortgage Credit



Dirk STEIN

Chair of the EBIC Working Group on Integration



Edward SIMPSON

Chair of the EBIC Working Group on the Consumer Credit Directive