



To European Banking Authority

FFI RESPONSE TO THE EUROPEAN BANKING AUTHORITY'S CONSULTATION PAPER ON DRAFT GUIDELINES ON PRODUCT OVERSIGHT AND GOVERNANCE ARRANGEMENTS FOR RETAIL BANKING PRODUCTS

The FFI 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.

The FFI represents banks, insurers, authorized pension companies, finance houses, securities dealers and financial employers operating in Finland. Its members also include employee pension, motor liability and workers compensation insurers, all three providers of statutory insurance lines that account for much of Finnish social security.

1 General comments

Strengthening market confidence and consumers' trust is an important objective that FFI supports. There are, however, some challenges relating to suggested POG regulation:

- Investment product regulation leads the way in many areas in the European financial regulation. It is not, however, reasonable to copy as such investment product regulation to other financial products and services since there are elements that are simply not suitable for them.
- Retail banking products are typically very simple products designed for all retail clients. There is no actual need for the concept of target market. On the contrary, many of the retail banking products will be such that all retail clients are entitled to have them (PAD).
- Especially the obligation for the manufacturer to identify interests, objectives and characteristics of target market is very difficult in practice. A group of consumers cannot have similar interests, objectives and characteristics. The terminology used is taken from MiFID's suitability test, which is a test made individually for each client. This poses a true risk of confusion. Also, according to the draft guidelines, the banks would be obliged to deny the access to the product if a consumer would not be in the target market. This is a very strict requirement and problematic for instance for internet sales.
- Following up product's suitability for a group of consumers is practically impossible. Written as a requirement from the authority, this is likely to increase litigation.
- Building up processes required in the draft guidelines would be very expensive.
- Due to the facts stated above, the proportionality of the requirements is vital.



2 Consultation Questions

Question 1: Do you agree with the proposed approach of capturing the entire product life cycle by covering distribution as well as manufacturers?

The Guidelines should not require the manufacturer to ensure that the distributor complies with the Guidelines. We suggest the following amendment:

4.1.2 Scope

*These guidelines are addressed to competent authorities as defined in Article 4(2) of Regulation EU/1093/2010 ("EBA Regulation"). With regard to the guidelines for distributors listed in title III, competent authorities should either require distributors directly to comply with them or require manufacturers under their supervision to **take reasonable steps to inform the distributors of the guidelines** ~~ensure that distributors comply with them.~~*

The concept of a consumer is established and should not be changed for a specific set of Guidelines. We suggest the following deletion:

~~Competent authorities may decide to expand the scope of consumers by also including other persons, such as micro-enterprises or intermediaries other than credit intermediaries, by ensuring that the arrangements provided by these guidelines are complied with.~~

Question 4: Do you agree with Guideline 1 on establishment, proportionality, review and documentation?

When deciding the proportionality of the measures to be taken, the risk of the product should be considered in addition to the level of complexity. All simple and basic products should be subject to very restricted applicability.

Question 6: Do you agree with the Guideline 3 on the target market?

It is not clear how the target market should be defined for simple and basic retail products. The concept is taken from the investment product world and is not suitable for retail banking products. Defining target market is in conflict with statutory duty to provide certain products or services to all retail clients (for instance basic bank account). Also, it is not relevant for simple basic products such as accounts, basic payment cards, payment services etc. For this kind of products the procedure creates only bureaucracy.

The obligation for the manufacturer to identify interests, objectives and characteristics of target market is very difficult in practice. The information in question is not publicly available information. Also, it is not such information that could actually be defined in a group level. In order to find out if the client belongs to the target group, the bank has to ask him certain questions. After getting the answers the bank has to judge if the client belongs to the target group. This is *de facto* a suitability test. The fact that the guidelines use the same words



that MiFID enforces this impression and poses a true threat of confusion.

Also, according to the draft guidelines, the banks would be obliged to deny the access to the product if a consumer would not be in the target market. This is too a strict consequence that does not exist even in MiFID.

Fitting into existing product line should be only a business decision. Banks have an inherent interest to make the decision making easy for the client. EBA stated in the public hearing that the concern they have is that some consumers might have difficulties choosing or comparing the products. A reasonable consumer is able to compare different products and variety of products gives him the possibility to find a product that fits his needs best. The suggested formulating in draft guidelines 3.4. seems disproportionate and could worsen the situation for the majority of clients.

The guideline 3.5. could prevent internet distribution. This is not compatible with EU's digital agendas and current operational environment of the financial sector. The manufacturer has to be able to provide products via internet. It is not clear how the banks could prevent certain consumers from buying products via internet.

Financial capability (guidelines 3.6.) might be understood as economical capacity. EBA, however, stated in the public hearing that what is meant by the term is understanding of financial products.

We suggest the following amendments:

- 3.1. *Manufacturers should include, in their product oversight and governance arrangements, steps and features that need to be followed to identify the relevant target market of a product, if applicable.*
- 3.2. *The manufacturer should, having first identified the target market, take reasonable steps to ensure that the product is deemed appropriate for interests, objectives and characteristics of the identified target market(s).*
- 3.3. *The manufacturer should only design and bring to the market products with features, charges, risks, that meet the interests, objectives and characteristics of, and are of benefit to, the particular target market identified for the product.*
- 3.4. *The manufacturer should consider how the product fits within the manufacturer's existing product range and whether the presence of too many product variants prevents the consumer from making informed decisions.*
- 3.5. *The manufacturer should also identify the market segments for which the product is considered likely not to be appropriate meet their interests, objectives and characteristics. The manufacturer should not actively offer the product for such a market segment. and prevent that the product is offered to these market segments.*
- 3.6. *When deciding whether a product is appropriate for meets the interests, objectives and characteristics or not of a particular target market, the manufacturer should assess the general degree of understanding on financial products financial capability of the target market.*



Question 7: Do you agree with Guideline 4 on product testing?

Testing (from target market perspective) it is not always relevant for simple basic products such as accounts, basic payment cards, payment services etc.

The proposed “scenario analysis” is appropriate only to investment products and will be regulated within PRIIPs at level 2 for the relevant products. Simple basic banking products should be excluded from this (how would scenario analyses apply to basic bank accounts or payment cards?). Product testing should be required only, if it is applicable.

Effect on each and every consumer is subjective; one should rather test how the product operates under different kind of scenarios. Also poor result is a subjective issue and seems to be relevant only for investment products. Different kind of product disclosure regulations make sure that the clients get enough and high quality information on different options to choose from. There is an inherent interest for banks to provide products that satisfy their clients’ needs.

We would suggest the following amendments:

- 4.1. *Before product is designed and brought to the market; an existing product is sold to new target markets; or significant changes to existing product are introduced, the manufacturer should conduct product testing, **if applicable**, in order to be able to assess how the product would **operate** ~~affect its consumers~~ under a wide range of scenarios, including stressed scenarios. ~~Manufacturers should make appropriate product changes where the scenario analysis gives rise to poor results for the target market~~*

Question 8: Do you agree with Guideline 5 on product monitoring?

It is unclear how banks could monitor the products to ensure they meet the interests, objectives and characteristics of the target market on an ongoing basis. The manufacturer has no other information that it could use for this than client feedback/complaints. We believe it would be reasonable to demand that the manufacturer takes into account relevant feedback from the clients when designing new products.

We suggest the following amendments:

- 5.1. *Once the product is brought to market, the manufacturer ~~is ultimately responsible for product monitoring and should monitor~~ **based on information received from the consumers on an on-going basis that whether** the product continues to **be appropriate for** ~~meet the interests, objectives and characteristics of~~ the target market. **The manufacturer should take into account the relevant information received from the consumers when designing new products.***

Question 9: Do you agree with Guideline 6 on remedial action?

The manufacturer cannot change the conditions and terms of products unilaterally, unless



that has been agreed in the terms and conditions and are allowed under the relevant legislation. The contract law is currently stated by each and every Member State. The focus of the guideline should be going forward, in the new products.

We suggest the following amendments:

- 6.1. *If the manufacturer identifies a problem related to the product in the market, or when monitoring the performance of the product as required in Guideline 5.1 above, the manufacturer should ~~take the necessary action to mitigate the situation and prevent a re-occurrence of detriment~~ when designing new products for the target market.*

Question 10: Do you agree with Guideline 7 on the selection of distribution channels?

The Guidelines should not require the manufacturer to ensure that the distributor complies with the Guidelines. We suggest the following amendment:

- 7.2. *The manufacturer should take reasonable steps to ensure that the products are distributed to the identified target market and only actively sold outside the target market on a justified and exceptional basis.*

FEDERATION OF FINNISH FINANCIAL SERVICES

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