

European Banking Authority (EBA)

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Date
10 February 2015

EBA - Consultation; Guidelines on product and governance arrangements for retail banking products (EBA-CP-2014-37)

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking industry, appreciates the possibility to comment on the above cited consultation paper and would like to submit the following position:

Existing EU legislation / In general

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 have recently been reviewed:

- The Markets in Financial Instruments Directive II (MIFID II)
- The Payment Accounts Directive
- The Mortgage Credit Directive
- The Consumer Credit Directive
- The Proposal for a Payment Services Directive

Against this background, we do not necessarily see the added-value to introduce further standards for all products. Importantly, we think that primarily 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.

An implementation of guidelines as suggested by the EBA could lead amongst other things to a decrease of the availability of loans rather than helping better credit supply.

Many concepts used in the guidelines are especially of relevance to investment type products. However they do not sufficiently 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. We believe that “the stretching” of the investment product regulation to all retail banking products is simply not suitable.

We believe that potential issues linked to product design and distribution practices are primarily the results of corporate decisions taken by individual firms - which may not be shared by other market participants and can be corrected by enhanced enforcement and supervision. We feel that adding on a layer of standards provides for sufficient flexibility. In particular, it is vital to ensure that market operators can swiftly respond to changing customer feature and/or expectation. We also think particular attention should be provided to the impact of these standards on smaller firms and, in turn, on competition.

Scope

We understand that commonly used retail products such as accounts, basic payment facilities 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 these products that customers use on a daily basis and 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.

“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 a key to ensure successful business. The introduction of a new product always involves 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 implementation costs of the proposed POG arrangements will exceed the added-value for consumers. We believe such costs will necessarily be transferred to the end-user.

Comments regarding specific guidelines

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 a 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.

(3.2) The concept of “consumer interest” is 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 would not be realistic to transpose it in other distribution models.

(3.4) The suggestion that manufacturers should be prevented from developing or proposing too many product variants is unacceptable. We think this completely contradicts the objective of a modern and responsible supervisory framework.

(3.5) We think a general requirement to identify an unsuitable target market is a 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. It is unclear how the identification of the market segments for which the product is considered likely not to meet consumer interests, objectives and characteristic will interact with existing 'suitability requirements' set out by National Competent Authorities (NCAs). As an additional general observation, we think the proposed standards interfere with consumers' ability to decide on their own whether or not they wish to enter into a specific agreement. This is not consistent with the spirit of EU retail financial services legislation.

Guideline 4 - Product testing

The proposal to implement 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.

Retail banking products are already tested before they are being proposed to the market. 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.

We ask you to give our remarks due consideration.

Yours sincerely,

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