

EBA/GL/2015/18

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15 July 2015

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# Final Report

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Guidelines on product oversight and governance arrangements for retail banking products

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## Executive Summary

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Developments in the markets for financial services in recent years have shown that failures in the conduct of financial institutions towards their customers can, not only cause significant consumer detriment, but also undermine market confidence, financial stability and the integrity of the financial system. In order to address some of the causal drivers of conduct failure, and following the initial work carried out by the Joint Committee of the three European Supervisory Authorities (phase 1), the EBA has developed detailed product oversight and governance Guidelines for manufacturers and distributors of retail banking products that fall within the EBA's regulatory remit, i.e. mortgages, personal loans, deposits, payment accounts, electronic money, and payment services such as credit and debit cards (phase 2).

The requirements for manufacturers cover the manufacturer's internal control functions, identification of the target market, product testing, disclosure, product monitoring, remedial actions and distribution channels. The requirements for distributors, in turn, cover the distributor's internal arrangements, identification and knowledge of the target market, and information requirements.

The Guidelines are forward-looking in nature; they do not simply address past failings but rather provide a framework for robust and responsible product design and distribution to avoid future cases of detriment. Developing products with the consumer's interest, objectives and characteristics in mind from the outset is a cornerstone of ensuring good consumer outcomes, and should help to re-establish and maintain confidence in retail banking.

The draft Guidelines were subject to a three-month consultation period between November 2014 and February 2015. The EBA received 22 responses to the draft Guidelines, which varied with regard to the level of support. While some respondents were supportive and requested that the Guidelines to contain more detailed requirements, other respondents were of the view that current industry practices already reflect the requirements set out in the Guidelines; that the requirements would interfere with consumer choice and/or the flexibility of financial institutions; or that the Guidelines would introduce new and onerous requirements for market participants. Other comments raised concerns about proportionality and the lack of clarity of some aspects of the subject matter and the scope of application of the Guidelines.

The EBA assessed all the main arguments presented in the responses, with a view to deciding on whether amendments were required before issuing the final Guidelines. The result of this assessment is presented in an extensive 'feedback' section in this report, which includes changes that have been made to Guideline 1.5 as well as clarifications that have been inserted to clarify the proportionality, scope and application of the Guidelines.

# Background and rationale

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This section summarises the background of previous work on product oversight and governance carried out by the three European Supervisory Authorities and sets out the rationale for the European Banking Authority embarking on phase 2 of the work.

## Background

Developments in the banking, insurance and investment markets in recent years have shown that failures in the conduct of financial institutions can cause significant consumer detriment. Conduct failures occur in many different ways, which may be usefully grouped into:

1. *retail* conduct failure, which is about consumers experiencing detriment directly as a result of conduct failures in their interaction with financial institutions;
2. *market* conduct failure, which is about consumers experiencing detriment indirectly as a result of market-wide retail or wholesale conduct failures.

The conduct of financial institutions concerns regulators not only from a consumer protection perspective, but also from a prudential perspective and in relation to their objective of promoting market confidence, financial stability and the integrity of the financial system in their national jurisdictions and at the European level. Conduct failure can give rise to direct costs to financial institutions as a result of, for example, fines and penalties imposed through regulatory proceedings; settlements with regulators; sums paid to third parties as required by regulators, such as redress and compensation; loss of income resulting from conduct failure; or sums paid in relation to litigation proceedings.

According to a recent research,<sup>1</sup> between 2008 and 2013 10 major global banks incurred conduct-related costs of around EUR 170 billion. At end 2013, their provisions for future costs stood above EUR 70 billion. More than 40 % of the total costs were related to banks' conduct with non-US consumers. The potential risks to the financial system of widespread misconduct of financial institutions have also been identified and analysed in various reports by European<sup>2</sup> and national<sup>3</sup> organisations. Recent reports identify a widening number and magnitude of incidents of mis-selling of financial products, and concerns about insufficient provisions and inadequate disclosure prevail.

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<sup>1</sup>See CCP Research Foundation (2014), Conduct Costs Project; <http://conductcosts.ccpresearchfoundation.com/>; Autonomous (2014), Global Banks - Litigation Costs Update

<sup>2</sup> EBA (2014), Consumer Trends Report 2014; EBA (2014) Risk Assessment of the European Banking System, EBA / ESMA / EIOPA (2014), Joint Committee Report on Risks and Vulnerabilities in the EU Financial System

<sup>3</sup> Bank of England (2014), *Financial Stability Report - June*, Financial Conduct Authority (2014), *Risk Outlook 2014*;

In order to address some of the causal drivers of the failure in the *retail* conduct of financial institutions as manufacturers of banking, insurance and investment products, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), which were established in 2010-11 to foster consumer protection and to promote the stability, effectiveness and integrity of the financial system, collectively known as the European Supervisory Authorities (ESAs), carried out work in 2013 on the topic of manufacturers' product oversight and governance (POG) processes.

The market for retail financial products and services is prone to specific failures, in particular due to information asymmetries.<sup>4</sup> In addition, the costs and benefits from mis-sold financial products tend to be distributed rather unequally. As evidenced by the conduct costs referred to above, mis-selling can detrimentally affect a large number of consumers, causing small costs for them individually. The individual consumer has, therefore little incentive to seek redress. At the same time, total profits for financial institutions can be very high. This combination entails the risk of financial institutions intentionally exploiting consumers' behaviour.

The ESAs assessed the extent to which consumers across the banking, insurance and securities markets have experienced, or are at risk of experiencing, detriment as a result of failures of manufacturers in overseeing and governing the development and marketing of their products. Particular attention was paid to manufacturers' identification of the target market for a product and their taking account of the interests, objectives and characteristics of this market.

As a result, the ESAs published as a first phase approach, on 28 November 2013, a *Joint Position on Manufacturers' Product Oversight and Governance Processes*<sup>5</sup>, in accordance with Article 56 of each of the ESA regulations.<sup>6</sup> The eight high level principles contained in the Joint Position were not directly addressed to financial institutions that manufacture financial products or services, or to national supervisory authorities. Rather, they constitute a common ground to provide as much consistency as is possible for any more detailed work that may subsequently be carried out in each of the three sectors. This common ground was intended to be of benefit to:

- consumers, who can rely on the same regulatory arrangements no matter where they reside or where the manufacturer is located in the EU;
- financial institutions, which should be able to streamline their internal processes across their product range as a result of a high degree of regulatory convergence between the more detailed sector-specific requirements that may emerge later; and

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<sup>4</sup> European Parliament (2014), Consumer Protection Aspects of Financial Services

<sup>5</sup> <http://www.eba.europa.eu/-/eba-eiopa-and-esma-publish-joint-position-on-product-oversight-and-governance-processes>

<sup>6</sup> Regulation (EU) No 1093/2010 (the EBA Regulation); Regulation (EU) No 1094/2010 (the EIOPA Regulation); Regulation (EU) No 1095/2010 (the ESMA Regulation).

- national supervisory authorities, which may also be able to streamline their supervisory efforts.

The Joint Position invites each ESA subsequently to develop more detailed requirements specific to their respective sectors.

These are forward-looking Guidelines; they do not simply address past failings but rather provide a framework for robust and responsible product design and distribution to avoid future cases of detriment. The EBA stipulates that as of the implementation date, these Guidelines apply to all products brought to the market after the implementation date, as well as to all existing products on the market that are significantly changed after that. Competent authorities may wish to consider applying relevant Guidelines, such as Guideline 5 and 6, to products that were brought to the market before the implementation date of the Guidelines. The banking sector must consider the needs of its customers when designing products. Developing products with the consumer's interest, objectives and characteristics in mind from the outset is a cornerstone of ensuring good consumer outcomes, and should help to re-establish and maintain confidence in retail banks. In addition, having good product oversight and governance arrangements in place might help to reduce the need for competent authorities to intervene in the markets *ex post*, for example by making use of a product intervention power.

These Guidelines supplement other EBA guidelines that may be relevant to product oversight and governance. In particular, the EBA's Guidelines on Internal Governance (GL 44) include guidelines on the new product approval process that credit institutions should adopt, and, where relevant, these Guidelines refer to relevant guidelines from GL 44<sup>7</sup>.

## Rationale

In the second phase of the POG work, and based on the principles referred to above, the EBA carried out work in early 2014 to develop more detailed POG requirements specific to the retail banking products and services that fall within its regulatory remit (i.e. mortgages, personal loans, credit/debit cards, savings products, payment services and payment accounts) as well as to credit institutions, including payment institutions, electronic money institutions, and creditors which fall within the EBA's scope of action. To that end, the EBA conducted various analyses and surveys among the 28 EU Member States to ascertain the extent to which consumer detriment has arisen, or may arise, as a result of manufacturers of retail banking products having failed to have proper POG arrangements in place.

In response, some Member States reported problems with specific types of mortgages that were originally targeted at a niche group of borrowers, but which, at the height of the market, were sold

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<sup>7</sup>[https://www.eba.europa.eu/documents/10180/103861/EBA-BS-2011-116-final-EBA-Guidelines-on-Internal-Governance-%282%29\\_1.pdf](https://www.eba.europa.eu/documents/10180/103861/EBA-BS-2011-116-final-EBA-Guidelines-on-Internal-Governance-%282%29_1.pdf)

to consumers beyond that target market, many of whom could not afford them. The arrears rates of these mortgages were multiples of those of conventional mortgages and would have arguably been even higher if central banks across the EU had not embarked on a sustained period of record low interest rates in the wake of the 2008 financial crisis.

Other Member States reported problems with the product governance of mortgages that were sold in conjunction with other products, with the aggregate product offering not meeting the objectives of the target market. Consumers were also wrongly mis-sold products as a result of inappropriate distribution strategies and it was reported that even if the terms and conditions of some retail banking products are provided to consumers, consumers tend to rely more on oral explanations by manufacturers' staff.

In other cases still, consumers were sold loans that were exposed to exchange rate risks, the extent of which was often unbeknown to them. Finally, some Member States experienced problems with the poor presentation of risks associated with specific banking products and an excessive degree of complexity given the market segment to which the products were sold.

In order to address the identified failures, the EBA has developed, as part of the second phase of the POG work, a set of guidelines for (a) financial institutions as manufacturers of retail banking products, and (b) distributors of retail banking products. The Guidelines follow an activity-based approach: distributors that are involved in the design and manufacture of a product should be considered manufacturers for the purpose of setting up POG arrangements, and should therefore also comply with the guidelines set forth for manufacturers, in addition to the guidelines for distributors.

Financial institutions that manufacture products should firstly establish and implement POG Guidelines setting out internal arrangements for the design, marketing and life cycle maintenance of products. These arrangements should ensure that products are designed, in principle, to meet the interests, objectives and characteristics of a certain type of consumers (the target market), while taking into account factors such as the financial capability of the target market. The arrangements should also identify any need to modify/replace existing product when they no longer meet the interests, characteristics and objectives of the target market for which the product was conceived.

Subsequently, manufacturers should periodically assess (i) that the internal product oversight and governance arrangements are being duly complied with, (ii) that the internal POG arrangements are still valid and up to date and (iii) whether the specifications of particular products continue to meet the interests, objectives and characteristics of the target market for which they were designed.

Distributors of retail banking products should comply with the product oversight and governance arrangements of the manufacturer which are specific to their role of bringing products to the market. Distributors should know and recognise the target market for which the product was designed and should normally sell and offer the product only to end-consumers in that target market. Distributors

should sell the product to a consumer who does not belong to the target market only on a justified basis.

# Guidelines on product oversight and governance arrangements for retail banking products

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# 1. Compliance and reporting obligations

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## Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>8</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, within 2 months from the publication of the translations of the guidelines in all EU languages on the EBA website. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/GL/2015/18'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>8</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).

## 2. Subject matter, scope and definitions

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### Subject matter

5. These Guidelines deal with the establishment of product oversight and governance arrangements for both, manufacturers and distributors as an integral part of the general organisational requirements linked to internal control systems of firms. They refer to internal processes, functions and strategies aimed at designing products, bringing them to the market, and reviewing them over their life cycle. They establish procedures relevant for ensuring the interests, objectives and characteristics of the target market are met. However, these Guidelines do not deal with the suitability of products for individual consumers.

### Scope of application

6. These Guidelines apply to manufacturers and distributors of products offered and sold to consumers and specify product oversight and governance arrangements in relation to:
  - Article 74(1) of Directive 2013/36/EU (“Capital Requirements Directive IV, (CRD IV)”), Article 10(4) of Directive 2007/64/EC (the “Payment Services Directive, (PSD)”), and Article 3(1) of Directive 2009/110/EC (the “E-Money Directive, (EMD)”) in conjunction with Article 10(4) of the PSD; and
  - Article 7(1) of Directive 2014/17/EU (the “Directive on credit agreements for consumers relating to residential immovable property, or Mortgage Credit Directive, (MCD)”).
7. Competent authorities may wish to consider applying these Guidelines to other entities in their jurisdictions that do not fall within the scope of the legislative acts referred to above but for which the competent authorities have supervisory responsibilities. In particular, competent authorities may wish to consider applying these Guidelines to intermediaries other than credit intermediaries under the MCD, such as consumer credit intermediaries.
8. Competent authorities may wish to consider extending the same protections set out in these Guidelines in relation to persons other than consumers such as micro-enterprises and small and medium-sized enterprises (SMEs).

9. These Guidelines supplement other EBA guidelines that may be relevant to product oversight and governance, in particular, the EBA's Guidelines on Internal Governance (GL 44)<sup>9</sup>.
10. These Guidelines apply to all products brought to the market after the implementation date of the Guidelines as well as to all existing products on the market that are significantly changed after the implementation date of these Guidelines. Competent authorities may wish to consider applying relevant Guidelines, such as Guidelines 5 and 6, to products that were brought to the market before the implementation date of the Guidelines.

## Addressees

11. These Guidelines are addressed to competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 and to financial institutions as defined in Article 4(1) of Regulation (EU) No 1093/2010 (the “EBA Regulation”).
12. With regard to Directive 2014/17/EU (the MCD), these Guidelines are addressed to competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 (EBA authority) which are also competent authorities as defined in Article 4(22) of Directive 2014/17/EU. They apply to the extent that those authorities have been designated as competent for ensuring the application and enforcement of those provisions of Directive 2014/17/EU to which these Guidelines relate.
13. Irrespective of whether or not an EBA authority is addressed under paragraph 12, 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 EBA authority, the EBA authority designated under that Article should, without prejudice to national arrangements adopted under Article 5 (3) of the MCD:
  - 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 EBA authority 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).

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<sup>9</sup> GL 44: [https://www.eba.europa.eu/documents/10180/103861/EBA-BS-2011-116-final-EBA-Guidelines-on-Internal-Governance-%282%29\\_1.pdf](https://www.eba.europa.eu/documents/10180/103861/EBA-BS-2011-116-final-EBA-Guidelines-on-Internal-Governance-%282%29_1.pdf)

14. With regard to the Guidelines for distributors, competent authorities should either require distributors directly to comply with them or require manufacturers under their supervision to ensure that distributors comply with them.

## Definitions

15. Unless otherwise specified, terms used and defined in the legislative acts referred to in the scope of application have the same meaning in these Guidelines. In addition, for the purposes of these Guidelines, the following definitions apply:

Manufacturer	An undertaking that designs (i.e. creates, develops, combines, or significantly changes) products to be offered to consumers and which is any of the following: a) a credit institution as defined in point (1) of Article 4(1) of the CRR; b) a creditor as defined in Article 4(2) of the MCD; c) a payment institution as defined in Article 4(4) of the PSD; or d) an electronic money institution as defined in Article 2(1) of the EMD, or which would otherwise be a distributor but which is involved de facto in the design of the product.
Target market	The group or groups of end consumers for whom the product is designed, as defined by the manufacturer.
Distributor	A person who offers and/or sells the product to consumers; this includes business units of manufacturers that are not involved in the designing the product but are responsible for bringing the product to the market.
Consumer	A natural person, who is acting for purposes which are outside his trade, business or profession.
Product	a) 'credit agreements relating to immovable property' as defined in Article 4(3) MCD; b) 'deposits' as defined in Article 2(3) of Directive 2014/49/EU ("Deposit Guarantee Scheme Directive, (DGSD)") <sup>10</sup> ; c) 'payment accounts' as defined in Article 4(14) PSD; d) 'payment services' as defined in Article 4(3) PSD; e) 'payment instruments' as defined in Article 4(23) PSD; f) other means of payment, as listed in Annex 1(5) CRD IV (e.g. travellers' cheques and bankers' drafts); g) 'electronic money' as defined in Article 2(2) EMD; or

<sup>10</sup> Deposits include all forms of deposits. Directive 2014/65/EU (the Markets for Financial Instruments Directive, (MiFID2)) has extended, in line with its Article 1(4), certain organisational and conduct of business rules to the subset of deposits called structured deposits, as defined in point (43) of Article 4(1) of MiFID 2. MiFID 2 product governance rules, including future delegated acts setting further specifications in relation to Article 16(3) and Article 24(2) of MiFID2, will apply to structured deposits as of 3 January 2017 and therefore these Guidelines will not apply in relation to them.

h) other forms of credit for consumers, in addition to that included in (a), provided by the manufacturers listed above, in line with Article 1(5)(e) of the EBA Regulation.

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Management body	An institution's body or bodies, which are appointed in accordance with national law, which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution, as defined, for example, in Article 3(7) CRD IV.
Senior management	Those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution, as defined, for example, in Article 3(9) of CRD IV.

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## 3. Implementation

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### Date of application

16. These Guidelines apply from 3 January 2017.

## 4. Product oversight and governance arrangements for manufacturers

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### Guideline 1: Establishment, proportionality, review and documentation

- 1.1 The manufacturer should establish, implement and review effective product oversight and governance arrangements. The arrangements should aim, when products are being designed and brought to the market, (i) to ensure that the interests, objectives and characteristics of consumers are taken into account, (ii) to avoid potential consumer detriment and (iii) to minimise conflicts of interest.
- 1.2 The product oversight and governance arrangement should be reviewed and updated by the manufacturer on a regular basis.
- 1.3 When launching a new product the manufacturer should ensure that the product oversight and governance arrangements are considered in the new product approval policy (NPAP) in line with Guideline 23 of the EBA's Guidelines on Internal Governance (GL 44) in cases where GL 44 applies.
- 1.4 All actions taken by the manufacturer in relation to the product oversight and governance arrangements should be duly documented; kept for audit purposes and made available to the competent authorities upon request.
- 1.5 Product oversight and governance arrangements should be proportionate to the nature, scale and complexity of the relevant business of the manufacturer. The implementation/application of the arrangements should have regard to the level of potential risk for the consumer and complexity of the product.

### Guideline 2: Manufacturers' internal control functions

- 2.1 The manufacturer should ensure that product oversight and governance arrangements are an integral part of its governance, risk management and internal control framework as referred to in GL 44, where applicable. To that end, the manufacturer's management body should endorse the establishment of the arrangements and subsequent reviews.
- 2.2 Senior management, with support from representatives of the manufacturer's compliance and risk management functions, should be responsible for continued internal compliance with the product oversight and governance arrangements. They should periodically check that the

product oversight and governance arrangements are still appropriate and continue to meet the objectives as set out in Guideline 1.1 above, and should propose to the management body that the arrangements be amended if this is no longer the case.

- 2.3 The responsibilities for the oversight of this process by the Risk Control function and the Compliance function should be integrated into their normal line of duties as outlined in Guidelines 25, 26 and 28 of GL 44, where applicable.
- 2.4 Senior management should ensure that staff involved in designing a product are familiar with and follow the manufacturer's product oversight and governance arrangement; are competent and appropriately trained; and understand and are familiar with the product's features, characteristics and risks.

### Guideline 3: Target market

- 3.1 Manufacturers should include, in their product oversight and governance arrangements, steps and features that need to be followed to identify, and update when necessary, the relevant target market of a product.
- 3.2 The manufacturer should, having first identified the target market, ensure that the product is deemed appropriate for the 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 and 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 not likely to meet their interests, objectives and characteristics.
- 3.6 When deciding whether or not a product meets the interests, objectives and characteristics of a particular target market, the manufacturer should assess the degree of financial capability of the target market.

### Guideline 4: Product testing

- 4.1 Before a product is brought to the market; an existing product is sold to a new target market; or significant change is made to an existing product, the manufacturer should conduct product testing, in order to be able to assess how the product would 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.

## Guideline 5: Product monitoring

- 5.1 Once the product is brought to market, the manufacturer is ultimately responsible for product monitoring and should monitor the product on an ongoing basis to ensure that the interests, objectives and characteristics of consumers continue to be appropriately taken into account.

## Guideline 6: Remedial action

- 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.
- 6.2 The remedial action should include promptly notifying the distributor of changes or modifications to the existing products and any additional actions that need to be taken to remedy the situation.

## Guideline 7: Distribution channels

- 7.1 The manufacturer should select distribution channels that are appropriate for the particular target market. To that end, the manufacturer should select distributors that have the appropriate knowledge, expertise and capability correctly to place each product in the market and to provide appropriate information explaining the characteristics and risks of the product to the consumers. When selecting its distribution channels, the manufacturer may consider limiting the distribution of a specific product to channels that offer specific features to consumers.
- 7.2 The manufacturer should monitor that the products are distributed to the identified target market and sold outside the target market only on a justified basis.
- 7.3 The manufacturer should take all reasonable steps to ensure that distributors act in compliance with the objectives of the manufacturer's product oversight and governance arrangements. The manufacturer should take appropriate action when concerns about the appropriateness of a distribution channel are raised, for example by ceasing to use the particular channel for a particular product. In particular, the manufacturer should ensure, on an ongoing basis that the products reach mainly the particular intended target market through the distribution channels used.

## Guideline 8: Information for distributors

- 8.1 Where relevant, the manufacturer should provide the distributor with a description of the main characteristics of the product; its risks and any limitations; and the total price of the product (as known, or reasonably expected to be known by the manufacturer) to be borne by the consumer, including all related fees, charges, and expenses.
- 8.2 The information and details of the products to be provided to distributors should be of an adequate standard, clear, precise and up to date.
- 8.3 The manufacturer should ensure that the information given to the distributor includes all relevant details to enable them:
  - a) to understand and place the product properly on the market, and
  - b) to recognise the target market for which the product is designed (see Guideline 3.1), and also to recognise market segments whose objectives, interests and characteristics are considered likely not to be met (see Guideline 3.5).

## 5. Product oversight and governance arrangements for distributors

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### Guideline 9: Establishment, proportionality, review and documentation

- 9.1 The distributor should establish, implement and review effective product oversight and governance arrangements which are specific and proportionate to its size and to its role of bringing products to the market. The arrangements should be designed to ensure that, when bringing products to the market, the interests, objectives and characteristics of consumers are appropriately taken into account; to avoid potential consumer detriment; and to minimise conflicts of interest.
- 9.2 The distributor should review and update the product oversight and governance arrangements on a regular basis.
- 9.3 All actions taken by the distributor in relation to the product oversight and governance arrangements should be duly documented, kept for audit purposes and made available to the competent authority, or the manufacturer, upon request.

### Guideline 10: Distributors' governance

- 10.1 The distributor should ensure that product oversight and governance arrangements are an integral part of its general systems and controls. To that end, the management body, if relevant, should endorse their establishment and subsequent reviews.

### Guideline 11: Knowledge of the target market

- 11.1 The distributor should use the information provided by the manufacturer and have relevant knowledge and the ability to determine whether a consumer belongs to the target market. The distributor should in particular take due account of all relevant information allowing it to recognise the target market for which the product is designed, and also to recognise market segments for which the product is considered likely not to meet their interests, objectives and characteristics.

## Guideline 12: Information and support for the manufacturer's arrangements

- 12.1 The distributor should take into account the information provided by the manufacturer and disclose to the consumer a description of the main characteristics of the product, its risks and the total price of the product to be paid by the consumer, including all related fees, charges, and expenses, as well as providing additional material supplied by the manufacturer to be used by the target market.
- 12.2 The distributor should sell the product to a consumer who does not belong to the target market only on a justified basis. The distributor should also be able to provide information to justify to the manufacturer why it offered a product to a consumer who does not belong to the target market.
- 12.3 In order to assist the manufacturers in their obligation of product monitoring, the distributor should collect information to permit the manufacturer to decide whether the product the distributor brings to the market meets the interests, objectives and characteristics of the target market on an ongoing basis.
- 12.4 If the distributor identifies any problems regarding the product features, product information or the target market when offering and selling products, the distributor should promptly inform the manufacturer of the issue.

## 6. Outsourcing

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1. Where the activity of manufacturing and/or distributing is in whole or in parts outsourced to third parties or carried out by another entity in other ways, manufacturers and, where applicable, distributors should ensure that in doing so, they comply with the requirements established in the CEBS Guidelines on outsourcing accordingly.<sup>11</sup> This includes, in particular, guideline 2, which provides that “the ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with an outsourcing institution’s senior management”.

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<sup>11</sup> See CEBS (2006), *Guidelines on outsourcing*, at <https://www.eba.europa.eu/documents/10180/104404/GL02OutsourcingGuidelines.pdf.pdf>

# Accompanying documents

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## Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 10 February 2015. Twenty-two responses were received, of which twenty were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments, and the EBA's analysis, are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft Guidelines have been incorporated as a result of the responses received during the public consultation.

## Summary of key issues and the EBA's response

The responses received during the consultation varied in the support for the draft Guidelines. While some respondents were very supportive and interested in including detailed arrangements, other respondents commented on the absence of a specific Level 1 mandate, already existing industry practices, interference in consumer choice, introduction of a new and onerous liability to consumers and a constraint on flexibility.

Several received comments related to the principle of proportionality and the EBA emphasised this principle in the re-drafted wording of Guideline 1.5. Many respondents referred to individual consumers' transactions and the EBA confirmed that the Guidelines refer to internal processes, functions and strategies aimed at designing products and bringing them to the market; i.e. the Guidelines refer to requirements for manufacturers and distributors when designing and bringing to the market products for groups of consumers and not individuals. Concepts such as suitability tests and appropriateness assessments may well be relevant to individual sales but these are not matters for Guidelines on POG arrangements.

Some respondents were supportive of a high-level set of standards. The EBA emphasised that the Guidelines are an appropriate trade-off between the risk of vagueness of high-level standards and the stifling effect of too detailed requirements.

The EBA's views and responses regarding specific responses are presented in the table below.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>General comments</b>			
Respondents made several general comments that were not linked to a specific question.			
1)	Four respondents commented that POG is a regulatory concept that is suitable for investment products but not for banking products.	The EBA is of the view that there is ample evidence of banking products, too, being sold to consumers without meeting their objectives and interests, including mortgages, some types of deposits, and payment instruments (e.g. some credit cards). The POG requirements are therefore very suitable indeed to reduce consumer detriment going forward.	None.
2)	One respondent commented that banking products are "mass market products" that are simple and suitable for everyone and should therefore not be subject to the requirements, or to less stringent requirements.	The EBA is of the view that if a particular product was indeed a 'mass market product', the manufacturer should (and would need to) be able to demonstrate this for the POG process applied to that particular product.	None.
3)	One respondent commented that the POG requirements will lead to a reduction in the supply of loans.	The EBA is of the view that, without any further evidence in support of this claim, it is not clear to the EBA why requirements aimed at ensuring that products meet the objectives and interests of a consumer could be said to have such an effect.	None.
4)	Six respondents commented that the work of the EBA should be consistent with Level 1 regulation.	The EBA is of the view that the consultation responses have not provided any indication of where the POG requirements are inconsistent with Level 1 regulation. It is therefore difficult for the EBA to address this general comment.	None.
5)	One respondent commented that the POG requirements should take account of the specific case and business model of credit unions.	The EBA notes that these Guidelines apply to credit unions (subject to any national discretion in the EU legislation) if it:	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<ul style="list-style-type: none"> <li>- falls under the CRD-definition of credit institutions; is active in payment services and has been authorised as a payment institution in accordance with the PSD;</li> <li>- is an e-money institution;</li> <li>- offers credit to consumers, thus falling under the MCD as a creditor.</li> </ul> <p>In addition, with regard to proportionality see the EBA analysis in row 11.</p>	
6)	<p>Three respondents commented that the EBA should allow existing Level 1 text to come into effect first before introducing further regulation. Four respondents requested that the EBA reconsider the timetable for implementation of these Guidelines by national competent authorities because they believe a 12-month implementation period to be challenging. One respondent suggested that the period of implementation should be extended by 12 months to a two-year implementation period.</p>	<p>The EBA notes that the Guidelines build on existing Level 1 text (PSD, EMD, CRD IV) and that the implementation deadline is after the transposition date of Directives such as the MCD and MiFID( i.e. 3 January 2017) to allow manufacturers and distributors to introduce necessary changes resulting from various EU legislative acts within the same time period. To that end, the EBA changed the implementation date.</p>	<p>Implementation date changed to 3 January 2017.</p>
7)	<p>Two respondents commented that the Guidelines should be pitched at a sufficiently high level. One respondent commented that POG arrangements should not address the specifics of each transaction and cannot prevent individual conflicts between manufacturers and end users and that the Guidelines should therefore remain a high-level set of standards. One respondent commented that the POG arrangements resemble individual suitability tests.</p>	<p>The EBA is of the view that, at five pages, the Guidelines achieve an appropriate trade-off between the risk of vagueness of high-level standards and the stifling effect of too detailed requirements. In addition, the POG requirements are not written as, and should therefore not be read as, suitability requirements for each transaction. As the EBA mentioned in the subject matter section of the Guidelines, the Guidelines refers to internal processes, functions and strategies aimed at designing products and bringing them to the market; i.e. the Guidelines refer to requirements for manufacturers and distributors when designing and bringing to the market products for groups of consumers and not individuals. Concepts such as suitability tests and appropriateness assessments may well be relevant to individual sales, but these are not matters for</p>	<p>Addition to the 'Subject matter' section of the Guidelines: 'They establish relevant procedures for ensuring the interests, objectives and characteristics of the target market are met. However, these</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>Guidelines on POG arrangements.</p> <p>To address the comments, the EBA added an explanation to the 'Subject matter' section of the Guidelines.</p>	<p>guidelines do not deal with the suitability of products for individual consumers.'</p>
8)	<p>One respondent commented that the Guidelines appear to be a solution to problems in some EU Member States that have been unduly read across to other EU Member States.</p>	<p>The EBA notes that these requirements have been developed by the EBA in order to address issues identified across EU markets.</p>	None.
9)	<p>One respondent commented that that there have been failures by firms to have a clear understanding of to whom they are selling products; to risk-profile customers; to understand and take responsibility for the distribution chain; and to make clear the pricing of the product; and that the Guidelines will help to reduce consumer detriment and reduce the negative impact on market trust and confidence, financial stability and the integrity of the financial system.</p>	<p>The EBA agrees with this comment.</p>	None.
10)	<p>Two respondents commented that the identification of the objectives and characteristics of a target market is very difficult in practice because a group of consumers cannot have similar interests, objectives and characteristics, and that the terminology used is taken from MiFID's suitability test, which is a test made individually for each client and therefore inappropriate for the EBA Guidelines.</p>	<p>The EBA is of the view that the use of this language does not entail any suitability requirement as MiFID does and conveys clearly that a manufacturer should have a reasonable understanding of the target market for any product.</p> <p>See also the EBA analysis in row 7.</p>	None.
11)	<p>One respondent commented that smaller credit institutions might not be able to comply with the extended regulation requirements of the Guidelines. Ten respondents commented that the EBA Guidelines should be applied proportionately. Respondents suggested that the Guidelines should take account of the different features of products and should distinguish between simple products and more complex products. It was</p>	<p>The EBA accepts that the Guidelines should be proportionate and believes that this is adequately conveyed in Guideline 1.5. The EBA is also of the view that all POG requirements need to be applied to all products. If the manufacturer deems that the product meets the interests and objectives of any consumer and for any stress test scenario, then the manufacturer will not be required to carry out</p>	<p>Deletion of 'level of complexity of the product as well as'... and addition of: 'The implementation/ap</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	also suggested that the Guidelines should not restrict flexibility to adjust to various business models. One respondent commented that the POG requirements will apply only to creditors as defined in the MCD and credit institutions as defined in CRDIV but not to other consumer credit firms and that this therefore creates level- playing- field issues. It was also pointed out that the consultation paper did not include a reference to the Consumer Credit Directive.	product testing but will need to document and justify this assessment. To emphasise the proportionality principle, the EBA re-worded Guideline 1.5. See also the EBA analysis in next row.	plication of the arrangements should have regard to the level of potential risk for the consumer and the complexity of the product.'
12)	One respondent commented that the EBA Guidelines may create level-playing-field issues because they apply only to, and therefore disadvantages, those actors and activities that are already regulated at L1 and therefore, leave unregulated actors untouched.	The EBA recognises the concern but equally respects the legal basis for action (which, for example, does not include consumer credit).	None.
13)	Three respondents commented that the EBA Guidelines will not allow firms to be sufficiently flexibility to adapt to changing consumer expectations.	The EBA is of the contrary view that the requirement established in Guideline 5.1, which requires the manufacturer to monitor on an ongoing basis whether the product continues to meet the interests, objectives and characteristics of the target market, will help manufacturers to design products that better address changing consumer expectations.	None.
14)	Three respondents commented that the EBA Guidelines do not take account of individual responsibility, in particular the consumer's responsibility to enter into a financial contract/agreement.	Consumers and their actions/behaviour do not fall within the remit of the EBA; the EBA can therefore not issue requirements to consumers.	None.
15)	One respondent commented that as EIOPA and ESMA are producing similar requirements, there should be coherence between the outputs from the three ESAs.	As the EBA mentioned in the Background section of the consultation paper, the <i>Joint Position on Manufacturers' Product Oversight and Governance Processes</i> issued by the ESAs in November 2013 is a basis for the work of each ESA on the POG topic and it directly invited the ESAs to subsequently develop more detailed requirements specific to their respective sectors. The EBA monitors the development of the other ESA's work on POG to avoid any	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		inconsistencies.	
16)	One respondent commented that the EBA does not have a clear mandate, from Level 1 text, for these Guidelines.	The EBA confirms that, unlike the situation with technical standards, it has a general mandate, in Articles 9 and 16 of its founding regulation, to issue guidelines and does not require an explicit mandate. The prerequisite that need to be fulfilled is that the Directives that form the legal basis of the guidelines fall within the scope of action of the EBA. In the case of the POG Guidelines this prerequisite is fulfilled as the PAD, MCD, PSD, EMD, CRD IV and other Directives all do fall within the EBA's scope of action.	None.
17)	One respondent commented that only new products should be subject to the POG requirements.	<p>The EBA confirms that the POG requirements will apply only from the implementation deadline. However, the Guidelines will apply to all products brought to the market after the implementation date of the Guidelines as well as to all existing product on the market that are significantly changed after the implementation date of these Guidelines. Competent authorities may wish to consider applying relevant Guidelines, such as Guidelines 5 and 6, to products that were brought to the market before the implementation date of the Guidelines.</p> <p>To address this comment, a clarification was added to the Guidelines in Section 2, 'Scope of application'.</p>	<p>Addition of: 'These Guidelines apply to all products brought to the market after the implementation date of the Guidelines as well as to all existing products on the market that are significantly changed after the implementation date of these Guidelines. Competent authorities may wish to consider applying relevant Guidelines, such as</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			<p>Guidelines 5 and 6, to products that were brought to the market before the implementation date of the Guidelines.'</p>
18)	<p>One respondent commented that the POG requirements should also cover consumer protection issues arising from products being tied or bundled with other products, and the over-reliance by firms on the profits achievable through such practices.</p>	<p>The EBA is of the view that such cross-selling issues tend to arise across sectors and are therefore best addressed by the Joint Committee (JC) of the ESAs. The JC issued a consultation paper on cross-selling in December 2014 (<a href="https://www.eba.europa.eu/news-press/calendar?p_p_id=8&amp;p_p_lifecycle=0&amp;p_p_state=normal&amp;p_p_mode=view&amp;p_p_col_id=column-1&amp;p_p_col_count=1&amp;struts_action=%2Fcalendar%2Fview_event&amp;redirect=https%3A%2F%2Fwww.eba.europa.eu%2Fnews-press%2Fcalendar%3Fp_p_id%3D8%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1%26tabs%3Devents%26eventTypes%3Dconsultation%252Cdiscussion&amp;eventId=936744">https://www.eba.europa.eu/news-press/calendar?p_p_id=8&amp;p_p_lifecycle=0&amp;p_p_state=normal&amp;p_p_mode=view&amp;p_p_col_id=column-1&amp;p_p_col_count=1&amp;struts_action=%2Fcalendar%2Fview_event&amp;redirect=https%3A%2F%2Fwww.eba.europa.eu%2Fnews-press%2Fcalendar%3Fp_p_id%3D8%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1%26tabs%3Devents%26eventTypes%3Dconsultation%252Cdiscussion&amp;eventId=936744</a>). In addition, and to address the cross-selling aspect, the EBA suggested an amendment to the definition of a manufacturer.</p>	<p>The definition of a manufacturer has been redrafted as follows: 'An undertaking that designs (i.e. creates, develops, combines, or significantly changes) products to be offered to consumers and which is any of the following:</p> <ul style="list-style-type: none"> <li>a) a credit institution as defined in point (1) of Article 4(1) of the CRR;</li> <li>b) a creditor as defined in Article 4(2) of the MCD;</li> <li>c) a payment</li> </ul>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			<p>institution as defined in Article 4(4) of the PSD; or</p> <p>d) an electronic money institution as defined in Article 2(1) of the EMD, or which would otherwise be a distributor but which is involved de facto in the design of the product.'</p>
19)	One respondent commented that the principle of subsidiarity does not allow the EBA to issue these Guidelines.	The EBA disagrees. These Guidelines relate to requirements established under existing Union law, as referred to in the Guidelines in Section 2, 'Scope of application', for which the EBA is empowered to issue guidelines in accordance with the EBA Regulation. A lack of guidelines in the area covered is likely to result in different supervisory practices. These Guidelines aim to ensure common, uniform and consistent application of those provisions, while striking a balanced approach combining consistency and flexibility.	None.
20)	One respondent commented that 'interest, objectives and characteristics' should be replaced with 'product is appropriate for the target market'.	The EBA's view is that it would be misleading to introduce the term 'appropriate' which is relevant for individual transactions, when the Guidelines refer to internal processes, functions and strategies aimed at designing products and bringing them to the market; i.e. the Guidelines refer to requirements for manufacturers and distributors when designing and bringing to the markets products for groups of consumers and not individuals.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
21)	One respondent commented that the POG requirements are necessary and welcome in order to rebuild confidence in the markets.	With regard to the response that the POG requirements are necessary and welcome in order to rebuild confidence in the markets, the EBA agrees.	None.
<b>Responses to questions in Consultation Paper EBA/CP/2014/37</b>			
<b>Question 1. Do you agree with the proposed approach of capturing the entire product life cycle by covering distributors as well as manufacturers?</b>			
1)	<p>Four respondents suggested that the Guidelines should be proportionate to the nature and complexity of products. It was suggested that simple or basic products, which respondents assert that consumers are familiar with, should be excluded from these Guidelines. The list in 4.1.3 of the Consultation paper should be amended accordingly and a list of complex products to which the Guidelines should apply should be provided. One additional respondent argued that all the products listed in 4.1.3 have low complexity and are well established in the market and therefore regulations are not required.</p> <p>Three respondents stated that the Guidelines would reduce the number of products available and slow down innovation because for example, the costs of applying the guidelines to simple products would outweigh the benefits.</p>	<p>The EBA accepts the comments that the Guidelines should be proportionate and as already mentioned under General comments, the EBA believes that this is adequately conveyed in Guideline 1.5.</p> <p>See also the EBA analysis under General comments, row 11.</p>	None.
2)	Four respondents argued that the Guidelines are unnecessary at this time because EU legislation in this regard exists. As this legislation has only recently been transposed nationally, it is too early to ascertain if the new legislation is adequate and if new POG requirements are required.	See the EBA analysis under General comments, rows 4 and 6.	None.
3)	Two respondents requested that the EBA clarify what is meant by distributors and commented that distributors who were bank staff or who acted on behalf of a bank should be exempted from the Guidelines because bank-wide governance already exists. It was also stated that it	A distributor is defined in the Guidelines as ‘a person who offers and/or sells the product to consumers; this includes business units of manufacturers that are not involved in the design of the product but are responsible for bringing the product to the market.’ The	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	would not make sense to have different requirements for design and manufacturing units and for distribution units within the same bank.	<p>respondents did not explain why the sales staff of manufacturers or intermediaries acting on behalf of manufacturers should be exempted from the Guidelines for distributors or why in that case the delineation between manufacturer and distributor should cease to exist because, notwithstanding their connection to the manufacturer, they are distributing products to consumers and the Guidelines for distributors are specifically about POG arrangements as applicable to the activity of sales (distribution) to consumers. Persons that manufacture and distribute products can establish the requirements for both activities in a single policy.</p> <p>See also the amended definition of ‘manufacturer’ and page 17, row 18.</p>	
4)	Two respondents disagreed with the proposed approach citing the inevitability at that, the end of their life cycle, products will cease to satisfy consumers as other new and innovative products become available.	The EBA considers the reference to the product’s life cycle to cover from the introduction of the product to its withdrawal. Therefore, the EBA does not accept the comment, according to which the product’s life cycle ends when the product ceases to satisfy consumers.	None.
5)	Six respondents agreed with the proposed approach of capturing the entire product life cycle. One of these respondents qualified their agreement with the approach by stating their view that the Guidelines should apply to products designed and manufactured after the Guidelines are endorsed and should exclude existing products which are sold to new consumers after that date.	<p>The EBA notes that there is broad support for the Guidelines capturing the entire product life cycle.</p> <p>See also the EBA analysis under General comments, row 17.</p>	None.
6)	Seven respondents agreed with the proposed approach that the Guidelines would cover both manufacturers and distributors. One additional respondent agreed with the proposed approach but specified that the Guidelines should cover only distributors that that are involved in product design and manufacture and who are therefore actually manufacturers. This respondent disagreed that distributors should be	The EBA considers that effective product oversight and governance must also encompass activities after the product is brought to the market: product monitoring, remedial action and selection of distribution channels.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	covered by the Guidelines as they do not have a role in product design.		
7)	Three respondents challenged the inclusion in the 'Scope' that competent authorities may require that manufacturers under their supervision ensure that distributors comply with the Guidelines.	See the EBA analysis under Question 10, row 2.	None.
8)	One respondent agreed with the flexibility in the 'Scope' (4.1.2) of the Guidelines allowing competent authorities to decide to expand the scope of 'consumers' by also including other persons, such as micro enterprises or intermediaries other than credit intermediaries.. Two respondents disagreed with this part of the scope of application. One respondent referred to the different relationship between financial institutions and enterprises compared with the relationship between financial institutions and consumers, specifically referring to the fact that products are often specific to the individual enterprise, thereby rendering the definition of a target market inappropriate. Another respondent stated that the concept of 'consumer' was already established and should not be amended for specific Guidelines.	The EBA recognises that in the Level 1 legislation, there are various definitions of 'consumer'. For the purposes of these Guidelines, the EBA has not limited the scope of the Guidelines to any of these definitions, thereby allowing (but not requiring) their wider application. On that basis the EBA does not consider that this sentence should be removed from the Guidelines. In addition, the EBA clarified the scope of application of the Guidelines in relation to the application of the Guidelines by competent authorities.	Addition of: 'Competent authorities may wish to consider extending the same protections set out in these Guidelines to persons other than consumers such as micro-enterprises and small and medium-sized enterprises (SMEs).'
<b>Question 2. Do you agree with the delineation of the two sets of requirements for manufacturers and distributors?</b>			
1)	Nine respondents agreed with the proposed delineation of the two sets of requirements for manufacturers and distributors.	The EBA notes that broad agreement was expressed with the delineation of the two sets of requirements for manufacturers and distributors.	None.
2)	One respondent, who agreed with the proposal to differentiate between manufacturers and distributors, stated that it was important that the Guidelines also cover structures which do not currently fall within banking supervision and suggested that currently supervised credit institutions should be exempted from the Guidelines. Another respondent, who	The EBA is of the view that after the application date, the guidelines should apply to all relevant units of the manufacturers and distributors which are responsible for designing products and bringing them to the market.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	disagreed with the issuance of these Guidelines, shared this view.		
3)	One respondent, who agreed with the proposal to differentiate between manufacturers and distributors, pointed out that the Guidelines might make manufacturers into 'quasi-regulators' of distributors. The same respondent also pointed out that an unintended consequence of the Guidelines could be that manufacturers might choose to stop distributing their products through intermediaries.	The EBA has, in the Guidelines, clearly differentiated between the manufacturers' responsibilities and the distributors' responsibilities. It is not the intention of the Guidelines that the manufacturer will become a 'quasi-regulator' of the distributor. Instead the intention is that manufacturers will retain responsibility for the products that they have developed after they have launched them onto the market and provide the necessary information to the distributor to ensure that the products are sold to the audience that they were designed for.	None.
4)	Two respondents, who agreed with the proposal to delineate between manufacturers and distributors, stated that it should be clear that ultimate responsibility for product oversight and governance lies with the manufacturers.	The EBA considers that the Guidelines place the burden of responsibility for product oversight and governance on the manufacturer, while also reflecting the important role that distributors have regarding POG.	None.
5)	One respondent who agreed with the proposal to delineate between manufacturers and distributors stated that manufacturers can only identify the target market on an abstract basis and that distributors, because of their knowledge of the actual customer base, should make the final definition of the target market.	<p>The EBA broadly agrees with this view because a product should not be sold to a consumer solely on the basis of the consumer being a member of the target market. After determining that a consumer is within a target market, the distributor must still consider information about the consumer's individual circumstances before selling a product. The EBA amended Guidelines and 3.1 and 3.5 to reflect manufacturer's duties.</p> <p>See also the EBA analysis under General comments, row 7.</p>	Addition to Guideline 3.1: ' <u>...to identify, and update when necessary,</u> ' Deletion from Guideline 3.5: ' <u>...and prevent that the product is offered to these market segments</u> '.
6)	One respondent, who agreed with the proposal to delineate between manufacturers and distributors, requested that the EBA define 'complex product', suggesting that it should take into account the risk embedded in the product and the reward/return; and that if define 'new product'	The EBA notes that the respondent did not provide any arguments to support the suggested proposal. In addition, the respondent did not explain why it would be beneficial to include the concepts of 'complex' and 'new' products. As previously stated by the EBA under	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	suggesting that it should include product features that require significant changes to the bank's methods, processes and systems for product delivery.	'General comments', these Guidelines establish the principle of proportionality (see the EBA analysis under General comments, row 11).	
7)	A further respondent suggested that a distinction should be made between institutions that include both manufacturing and distribution functions and institutions that are either a manufacturer or a distributor. An additional respondent commented that it was unclear how the distinction would work in practice in a bank that is both a manufacturer and distributor. The same respondent commented that in such a case one set of requirements only should apply. The respondents also stated that where the manufacturer and distributor are two separate entities, it is not feasible to divide obligations between the two entities because of competition issues, intellectual property rights and data protection issues.	The EBA considers that the existing draft properly recognises that effective product oversight and governance must also encompass activities after the product is brought to the market: product monitoring, remedial action and selection of distribution channels.	None.
<b>Question 3. Are there any additional requirements that you would suggest adding to either of the two sets of requirements? If so, why?</b>			
1)	One respondent made a general remark related to the EBA Consumer Trends Report 2014 that instead of developing POG requirements for retail banking products, it would be more useful to develop financial literacy programmes.	<p>The EBA would like to point out that it clearly stated, in the Consumer Trends Report 2014, its intention to develop POG requirements:</p> <p>'... the EBA will embark on phase 2 of the work on Product Oversight and Governance, to develop more detailed requirements for the banking sector which build on the eight principles that have been published as a Joint Position.'</p> <p>With regard to financial literacy, the EBA will assess how best to fulfil its mandate. In the meantime, the EBA's work on product oversight and governance will consider requiring manufacturers to take into account the degree of financial capability of consumers when developing and marketing products.'</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
2)	<p>One respondent strongly proposed that the EBA includes banking products targeted at SMEs in the scope. Another respondent expressed its concern about the flexibility in the scope of the Guidelines that 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. The respondent referred to the differencing relationship between financial institutions and enterprises compared with the relationship between financial institutions and consumers, specifically referring to the fact that products are often specific to the individual enterprise, thereby rendering the definition of a target market inappropriate.</p>	<p>The EBA has included within the scope of the Guidelines the flexibility for competent authorities to ‘expand the scope of consumers by also including other persons, such as micro-enterprises or intermediaries other than credit intermediaries [...]’. The EBA deems that the expansion of the scope of consumers should be at the discretion of competent authorities because they may already have expanded the scope of consumers with regard to other conduct of business rules. In addition, the EBA provided clarification and slightly redrafted the ‘Scope of application’ section.</p>	<p>Addition of: ‘Competent authorities may wish to consider extending the same protections set out in these Guidelines in relation to persons other than consumers such as micro-enterprises and small and medium-sized enterprises (SMEs).’</p>
3)	<p>One respondent requested that the Guidelines make it clear that the use of undefined legal terms in the text (such as ‘to avoid potential conflicts of interest’) should not be interpreted as a general point of entry for additional rule-making.</p>	<p>These Guidelines set out the minimum requirements that competent authorities should incorporate into their supervisory practices. They may at their own discretion add additional requirements. The EBA does not limit competent authorities from developing supervisory practices on product oversight and governance that expand on these Guidelines.</p>	None.
4)	<p>Two respondents suggested broadly similar additional requirements as summarised below:</p> <ul style="list-style-type: none"> <li>i. The requirements for internal reviews should be more detailed, providing guidance on the content and frequency of internal reviews. POG arrangements should also be reviewed by an independent party, such as an auditor.</li> <li>ii. To facilitate scrutiny and transparency, manufacturers and distributors should make their POG arrangements available to the public.</li> </ul>	<p>The EBA is of the view that the Guidelines achieve an appropriate trade-off between the risk of vagueness of high-level standards and the stifling effect of too detailed requirements.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>iii. National supervisors should regularly assess if the POG arrangements prevent inappropriate products from being developed and sold. National supervisors should report on this to the EBA and publish their findings.</p> <p>iv. The EBA should review the effectiveness of these Guidelines five years after their implementation and make any necessary changes. This review should include consideration of introducing a product pre-approval process for certain types of products.</p>		
<b>Guidelines regarding the POG arrangements of retail banking products for manufacturers</b>			
<b>Question 4. Do you agree with Guideline 1 on establishment, proportionality, review and documentation?</b>			
1)	<p>One respondent suggested adding the following sentence to Guideline 1.2: ‘The manufacturer should notify any relevant output of review of product governance and oversight arrangements promptly to the distributor involved’.</p>	<p>Guideline 6.2 already requests that the manufacturer promptly notify the distributor of any changes or modifications to existing products and any actions that need to be taken to remedy a particular situation. Therefore, the Guidelines expect manufacturers to keep distributors informed of any relevant changes to the products and of any other information relating to the sale of the product. However, that does not mean that the manufacturer is requested to inform distributors of any changes to the internal policy or processes if they do not have any direct impact on the business of distributors. Consequently, the EBA does not propose any changes to the current text.</p>	None.
2)	<p>Another respondent noted that the wording in Guideline 1.1 ‘to avoid conflict of interest’ might not be entirely accurate as this respondent thinks that conflicts of interest cannot at all times be avoided and, therefore, suggested amending the wording as follows: ‘to minimise conflicts of interest’.</p>	<p>The EBA agrees with the suggested amendment and have inserted a change in the text.</p>	<p>Deletion of ‘avoid potential’, inclusion of ‘minimise’ and change to the word order of the sentence.</p>
3)	<p>Two respondents suggested that the EBA adds an additional requirement</p>	<p>Competent authorities are expected to duly supervise the</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>urging firms to publish their product governance and oversight arrangements (established after these Guidelines); this will make the arrangements subject to greater scrutiny. These respondents are of the opinion that there might be the risk that these principles become a box-ticking exercise. These two respondents also suggested that the EBA asks firms not only to carry out the review of the product governance and oversight arrangements internally, but also to appoint an independent external reviewer.</p>	<p>implementation of these Guidelines. As part of the supervisory process, distributors might be requested to provide supervisors with information on their internal product governance arrangements and how they carried out the periodic review. If supervisors find poor practice, firms might be requested to change or improve their practices. Consequently, the EBA is of the view that supervision itself might help reduce the risks noted by these respondents and, therefore, has not included the suggested additional requirements.</p>	
4)	<p>Although the majority of respondents seem to agree with the relevance of the proportionality clause governing the application of the arrangements, eight respondents suggested some modifications or improvements. Most of them suggested adding ‘the risk that the product might pose to consumers’ as an additional feature to be taken into account, as they think that ‘complexity’ is not sufficient to categorise products well. Two respondents also noted that the Guidelines do not make a clear distinction between more or less complex products and those that are slightly modified products, or those that are simple combination of existing products or a re-launch of products. One respondent is of the opinion that a clear definition of ‘complex product’ should be given, taking into account the specific risks linked to the product and its return/rewards. Another respondent suggests adding examples explaining what ‘regular’ means in the context of the review of the arrangements. Still another respondent is of the view that ‘complexity of products lines, distribution methods and distribution chains’ should not be used for the application of the proportionality clause as these are features that are very difficult to assess.</p>	<p>The proportionality clause should be as open as possible to give firms the necessary flexibility to assess each particular case. A very prescriptive proportionality clause might result in firms not being able to rely on it when deciding how to implement the arrangements and how to design the products following such policies. The EBA is not of the opinion that establishing a fixed distinction between complex and not complex products would be the most appropriate form of proportionality clause. Markets and products are in constant evolution and this particular rule should be able to encompass all that might come into being.</p> <p>In relation to the definition of a complex product, see the EBA analysis under Question 2, row 6.</p>	<p>‘The level of potential risk for the consumer’ has been added to Guideline 1.5 as an additional feature to be taken into account in the application of the POG arrangements.</p>
5)	<p>One respondent is of the opinion that the legislation in force governing mortgages, including the EBA guidelines on credit assessments and on arrears and foreclosure, already provide good protection to consumers and, therefore, suggested excluding mortgages from the scope of the</p>	<p>These Guidelines are complementary to other EBA guidelines and the EU legislation. As mentioned previously, these Guidelines focus on the design of products for groups of consumers; the bringing of the products to the market and the review of the POG arrangements</p>	<p>None.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Guidelines. This same respondent noted that the Guidelines are too detailed, which could interfere with a firm's legitimate interest in organising its own business in the way it finds suitable to comply with the relevant rules. Another respondent is of the view that there is already sufficient and adequate regulation on the governance of firms.</p>	<p>during the whole existence of the product, i.e. from the introduction of the product to its withdrawal. The EBA is of the view that the Guidelines achieve an appropriate trade-off between the risk of vagueness of high-level standards and the stifling effect of too detailed requirements.</p>	
6)	<p>Two respondents are of the opinion that the proposed Guidelines are not necessary as there already exist rules governing the design of products (for example in Germany). One of these respondents also notes that the launch of a new product is usually the result of a perceived change in consumer needs and, therefore, the target market of the product and the interest of consumers are already known.</p>	<p>The proposed Guidelines aim to create a change in the way firms design products; their main objective is to require firms to put the interests, objectives and characteristics of consumers first. Many current product approval processes followed by manufacturers are focused on their prudential needs. In addition, the main purpose of any EBA Guidelines, as established in Article 16 of the EBA Regulation, is to ensure a consistent and uniform application of Union law and to achieve consistent and coherent supervisory practices across the European Union. Consequently, these Guidelines are aimed at ensuring that all firms in the EU have similar practices and that consumers across Member States have a similar level of consumer protection.</p>	None.
7)	<p>Three respondents did not fully agree with the analysis included in the impact assessment and argued that it is not well substantiated that the benefits to consumers would outweigh the costs for the industry.</p>	<p>The respondents did not provide arguments that would contradict the EBA's analysis, which shows that the banks have incurred conduct-related costs of around EUR 170 billion between years 2008 and 2013. The EBA is of the view that these Guidelines address the causal drivers of the failures in the retail conduct of financial institutions; and the Guidelines aim to correct such failures and, at the same time, to protect consumers from being offered or sold inadequate products.</p>	None.
8)	<p>Another respondent specifically mentioned that proper consideration was not given to the 'principle of proportionality' applicable to EU legislation.</p>	<p>The respondent did not specify arguments that would support their response. See also the EBA analysis under General comments, row 11.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Question 5. Do you agree with Guideline 2 on manufacturers' internal control functions?</b>			
1)	<p>Three respondents agreed with Guideline 2. Three respondents are of the opinion that the Guideline in question is not necessary as firms already follow internal product design processes. Some of them also questioned the relevance of the firms' management board being directly involved in the reviews of the firm's product oversight and governance arrangements.</p> <p>Two respondents mentioned that GL 44 simply require firms' management bodies to oversee the overall risk strategy and policies of the institution, and that this requirement should be amended in light of that provision.</p>	<p>The main objective of the proposed Guidelines is to create a change in the way manufacturers design products; their main objective is to request manufacturers to put the interests, objectives and characteristics of consumers first. Many current product approval processes followed by manufacturers are focused on the prudential needs of the manufacturer. Guideline 2 does not expect the management body to be directly involved in the establishment and subsequent reviews of the product oversight and governance arrangements. However, it expects the board to have effective control and endorse the product oversight and governance arrangements that are prepared by other parts of the organisation.</p>	None.
2)	<p>Three respondents questioned the relevance of adding a particular requirement asking firms to make sure that the staff involved in the design of the product are appropriately trained, and also noted that senior management should not be directly involved in this process, as this is a matter for the HR department.</p>	<p>The EBA is of the view that the staff involved in the design of the product needs to be appropriately trained and have the relevant knowledge to understand the specific product's characteristics; only staff that understand the product can define the relevant target market and identify the persons for whom the product is deemed as not to meet their interests. Guideline 2.4 does not specifically require senior management to be directly involved in the training process; it requires only them to ensure that their staff receive the necessary training.</p>	None.
3)	<p>Two respondents noted that national and European supervisors, as well as consumer organisation and arbitration systems are already in place to help the consumer in case of problems with products.</p>	<p>The EBA is of the opinion that requesting manufacturers to act earlier and to consider the interests, objectives and characteristics of the target market even before designing products can avoid future detriment. The main objective of product oversight and governance arrangements is to avoid the need for recourse to alternative dispute resolution systems or the courts for compensation.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
4)	Two respondents reiterated previous comments and noted that firms should also be requested to appoint an external reviewer to carry out the periodic review of the product oversight and governance arrangements.	See the EBA analysis under Question 4, row 3.	None.
5)	One respondent suggested that the EBA not define 'senior management' or 'management board', so that flexibility is granted to firms to establish their management bodies in the most appropriate way according to their structure. This same respondent suggested specifying what it is meant by 'familiar, appropriately trained and understand the products features'.	The Guidelines do, in the EBA's view, require definition of 'management board' or 'senior management', and the definitions given are in line with the definitions contained in CRD IV, as the respondent requests. The EBA is not of the view that further information on what 'familiar', 'appropriately trained' and 'understand the product's features' means needs to be included in the content of the Guidelines, as the Guidelines expect manufacturers to specify this, on a case-by-case basis, and depending on the characteristics and features of the products that they are designing.	None.
<b>Question 6. Do you agree with Guideline 3 on the target market?</b>			
1)	A number of respondents commented that the Guidelines could restrict access of consumers who fell outside of the target market to products. Six respondents commented that the requirement to identify a target market will result in an institution having to deny access to a product/service to consumers who are not part of the target group. In the case of a mortgage, three of the respondents stated that it would be difficult to justify denying a consumer access to a mortgage if that consumer's creditworthiness had been positively assessed and if the information and explanations required by the MCD had been provided. Five respondents suggested that the Guidelines could result in discrimination against consumers who fell outside target markets and questioned the compatibility of these Guidelines with non-discrimination requirements. Another respondent commented on the strictness of the Guidelines compared with MiFID and stated that MiFID does not require that consumers outside of a target market are refused access to the product.	The Guidelines do not prohibit the sale of products to consumers outside of the target market if it is done on a 'justified and exceptional basis' and if they are not sold to consumers who fall within the group defined by guideline 3.5. Guideline 7.2 states that products are to be sold outside the target market only on a justified and exceptional basis'. In addition, Guideline 4.2 states that the distributor should be able to provide information to justify to the manufacturer why it offered a product to a consumer who does not belong to the target market. As stated in the 'Rationale' section of the Consultation paper, the distributor may sell products to consumers outside of the target market defined by the manufacturer, provided it justifies this decision.  To address the concerns, the EBA amended the wording of the Guidelines in question and reference is made to a 'justified basis'	Deletion of: 'exceptional' in Guidelines 3.5, 7.2 and 4.2 (new 12.2).

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>A respondent stated that the manufacturer should not be responsible if a distributor sells a product to a consumer outside of the target market. One respondent suggested that to prevent products from being mis-sold institutions should identify 'non-target markets' as opposed to target markets because limiting product sales to only consumers within a target market could result in limiting of opportunities provided to consumers.</p>	<p>only.</p>	
2)	<p>One respondent commented that the language used, 'interests, objectives and characteristics' is very close to the wording used in MiFID and could therefore be mis-interpreted as introducing a suitability assessment. This was also commented on by three other respondents, two of whom pointed out that an assessment of suitability was purposely excluded from the MCD. One respondent suggests the following re-wording of Guideline 3.2:</p> <p>'The manufacturer should, having first identified the target market, take reasonable steps to ensure that the product is deemed appropriate for the identified target market(s).'</p>	<p>See the EBA response related to the suitability assessment under General comments, row 7.</p>	<p>None.</p>
3)	<p>Three respondents pointed out that Article 7 of the MCD requires that firms take into account the rights and interests of consumers. Furthermore, the MCD requires that consumers have enough information to enable them to make informed decisions.</p>	<p>The EBA agrees with respondents that Article 7 (1) of the Mortgage Credit Directive requires creditors, credit intermediaries and appointed representatives to act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers. The EBA included reference to Article 7(1) in the 'Scope of application' section of the draft Guidelines.</p>	<p>None.</p>
4)	<p>Three respondents commented that there should be a distinction between simple and complex products because many simple products give access to a broad range of consumers and to add a further customer classification would over-complicate a simple product and might limit its offering. One respondent commented that many of the concepts used in the Guidelines do not match the characteristics of simple banking products and are of more relevance to investment products. Two</p>	<p>In relation to proportionality and complex products, see the EBA response under General comments, row 11.</p>	<p>None.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	respondents suggested that the words 'if applicable' be added to the end of Guideline 3.1.		
5)	Four respondents suggested that as retail banking products are generally designed for all consumers the Guidelines should state that the definition of a target market is superfluous in cases where it covers virtually all consumers or can cover all consumers. A further respondent suggested that as banking products have a high level of standardisation the concept of target market does not apply.	The EBA considers the views expressed directly linked to the issue of proportionality. See the EBA analysis under General comments, row 11.	None.
6)	Two respondents commented that the identification of a target market could result in a <i>probatio diabolica</i> during litigation; for example, a consumer who defaults on a mortgage may challenge the target market identified for the mortgage product in question.	The EBA disagrees that determining target markets for products could result in a <i>probatio diabolica</i> in legal cases because, during the sales or advice process, the financial institution will assess the individual's circumstances. The existence of a target market to which products should be offered does not replace the responsibility of distributors (whether independent intermediaries or manufacturers' sales staff) to advise (if advice is applicable) and sell to individual consumers appropriately. Depending on information gleaned about the consumer's circumstances during the individual sales or advice process, the distributor may decide that a product is inappropriate for a consumer despite that consumer being within the identified target market for that product. Therefore, a product should not be sold to a consumer solely on the basis of the consumer being a member of the target market.  See also the EBA analysis under Question 5, row 1.	None.
7)	One respondent commented that the distributor, not the manufacturer, is best placed to further specify the target market according to the consumer's individual circumstances. This was also stated by a second respondent who suggested that the manufacturer should identify a target market as a guide to the adviser and to the consumer.	The EBA broadly agrees with this view because a product should not be sold to a consumer solely on the basis of the consumer being a member of the target market. After determining that a consumer is within a target market, the distributor must still consider information about the consumer's individual circumstances before selling a product. The EBA does not consider that the Guidelines	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		need to be amended to reflect the duty of care in the sales or advice process involving the individual consumer.	
8)	Four respondents made the general comment that the Guidelines will interfere with a consumer's ability to decide on their own to enter into a financial contract. Two further respondents suggested that this Guideline could reduce consumer sovereignty and that the Guideline appears at odds with the MCD's emphasis on consumers making their own decisions. It was also suggested that the Guideline could limit the range of products available to some consumer groups and slow down the speed at which firms could bring new products to the market.	The purpose of the Guidelines is to prevent poorly designed products from reaching consumers. The EBA agrees that to the benefit of consumers, these Guidelines will limit the range of products offered to consumers by removing, from the product range products that could cause poor outcomes for them. Consumers will still retain the ability to choose products that they wish to purchase but to avoid consumer detriment, they will not be able to choose products that are not intended for their circumstances.	None.
9)	One respondent questioned whether the narrow definition of a target market could require an unjustified intrusion into a consumer's privacy.	As stated above, the identification of the target market does not replace the sales or advice process involving the individual consumer. During the process with the individual the distributor will request the necessary information from the consumer to provide advice and/or sell a product.	None.
10)	Three respondents commented that 'consumer interest' is a subjective concept and difficult to implement in practice. While the respondents agreed that the products should be created and distributed to meet end-users' interest, consumer interest should not be the standard used to assess institutions' behaviour. It was also pointed out that this Guideline would be very difficult to implement for execution-only sales. Two respondents questioned how banks could limit the sale of products over the internet to a specific target market only. One respondent referred to information provided by the bank to consumers as being adequate to allow consumers to make informed decisions and self-segment themselves regarding basic products.	The sale of a product by a financial institution, online or on an execution-only basis does not currently prevent the institution from setting product eligibility parameters or criteria; for example, some credit products require a minimum income level, so if a consumer with an income below that level requests the product online or on an execution-only basis, he/she will be refused. The respondents did not provide arguments showing how accommodating the target market in the sales process will be any more difficult than the existing accommodation in the online or execution-only sales process of product eligibility parameters or criteria.	None.
11)	One respondent commented that for new innovative products it is difficult to establish consumer objectives in the design phase, because the innovation must first happen before the needs can be understood or	The respondents have commented generally in their responses that financial institutions only issue products to the market that appeal	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>seen. A further respondent stated that the Guidelines should not impede bank's ability to respond to market opportunities and should allow some degree of flexibility to manufacturers.</p>	<p>to consumers. The EBA considers that financial institutions can establish consumer objectives at the design phase; these can of course be revised during product monitoring after the product has been launched to the market. The EBA suggests that these Guidelines, overall, will assist financial institutions in bringing products that are more appealing to consumers to the market and that product testing will assist them, at the design and development stage, in developing appealing products.</p>	
12)	<p>Regarding Guideline 3.4, three respondents disagreed that too many product variants could prevent consumers from making informed decisions and considered that this assumption contradicted the objective of a modern and responsible supervisory framework. Two respondents suggested that Guideline 3.4 could potentially constrain the products on offer in a market and as a result limit competition. It was also stated that a reasonable consumer is able to compare different products and that providing a variety of products gives consumers the opportunity to find the product that best suits their needs. One respondent commented that 'too many product variants' is difficult to assess objectively and can vary depending on the consumers. It also stated that a broad product range allows manufacturers to phase in and out certain variants. The following re-wording was suggested:</p> <p>'The manufacturer should consider how the product fits within the manufacturer's existing product range.' Two respondents asked for clarification of the meaning of 'product variants' and suggested that it was unclear who would determine the appropriate number of product variants. One of these respondents suggested that this Guideline could negatively impact on innovation and competition in the market.</p>	<p>The EBA considers that greater product variety can be valuable for consumers, but increased product numbers can also make shopping around more difficult and can obscure rather than clarify the basis for a rational purchasing decision. Under the POG Guidelines the manufacturer will simply need to demonstrate them as to why a new product variety is likely to better serve consumer interests.</p>	None.
13)	<p>One respondent suggested that consumers can be best served if their individual needs are assessed and a suitable product is provided to them.</p>	<p>The EBA broadly agrees that a product should not be sold to a consumer solely on the basis of the consumer being a member of the target market. After determining that a consumer is within a</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>target market, the distributor may well still need to consider information about the consumer's individual circumstances before selling a product.</p> <p>See also the EBA analysis under Question 5, row 1.</p>	
14)	<p>One respondent suggested that Guideline 3.5 be deleted because it is enough to identify the target market. Another respondent suggested that this Guideline be removed stating that the identification of a 'negative target market' goes beyond current practices, particularly for smaller banks with simple products and broad target markets.</p>	<p>The EBA does not agree that Guideline 3.5 should be deleted because to prevent mis-selling it is necessary to 'identify the market segments for which a product is considered likely not to meet their interests, objectives and characteristics'.</p> <p>See also the EBA analysis under General comments, row 11 on proportionality.</p>	None.
15)	<p>One respondent suggested that Guideline 3.5 be re-worded as follows: 'The manufacturer should also identify the market segments for which the product is considered likely not to be appropriate. The manufacturer should not actively offer the product for such a market segment'.</p>	<p>The EBA considers the comment supportive of the desired outcome but did not adopt the drafting suggestion because it is seen unhelpfully to dilute the expected conduct standard where a product is recognised as poorly fitting some target markets. However, the EBA deleted the last sentence of the Guideline.</p>	Deletion of: 'and prevent that the product is offered to these market segments.'
16)	<p>Four respondents stated that the requirement in Guideline 3.5 to identify a target market for which a product is unsuitable will restrict manufacturers' ability to adjust to diverse consumer profiles and will restrict consumers' access to finance. It was also stated that it was unclear how this Guideline would interact with national suitability requirements. One further respondent stated that it is the consumer's needs that should be the deciding factor in choosing a product, not the consumer's inclusion in a target market.</p>	<p>The EBA does not consider the concern to be evidenced. Those consumers who might lose access would be consumers for whom the manufacturer considered the product to be ill-suited. This will simply address a possible cause of conduct risk.</p>	None.
17)	<p>One respondent commented that Guideline 3.6 is vague, that it is unclear if 'financial capability' refers to skills or motivation and that it does not include the other factors that influence consumers' behaviour, such as cultural, social, personal, and psychological factors. The influence of these</p>	<p>For the purposes of this Guideline the EBA considers 'financial capability' to mean target consumers' understanding of financial products.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>factors on behaviour was one of the key conclusions of the Joint ESAs Consumer Protection Day on 4 June 2014. A second respondent suggested that if this Guideline is not deleted then how an estimation of the capability of a target market would be achieved should be defined.</p> <p>One respondent stated that financial capability could be understood to mean economic capacity, as opposed to an understanding of financial products which was the definition given in the public hearing. The respondent suggested the following re-wording of this Guideline:</p> <p>‘When deciding whether a product is appropriate for a particular target market, the manufacturer should assess the general degree of understanding of on financial products financial capability of the target market.’</p>		
18)	<p>Two respondents suggested that Guideline 3.6 implies that standardised groups of consumers exist within a market. In relation to mortgages, the creditworthiness assessment of an individual consumer, as required by the MCD, is stated as being more valuable than an assessment of average financial capability in a group of consumers.</p>	<p>The EBA considers that target markets can share interests, objectives and characteristics. The assessment of creditworthiness required by the Mortgage Credit Directive is conducted on an individual consumer. As explained in the EBA’s analysis in relation to other questions, appropriate POG arrangements do not address the suitability of individual purchase decisions.</p> <p>See also the EBA analysis under General comments, row 7.</p>	None.
19)	<p>Regarding Guideline 3.6, three respondents suggested that practically it would be very difficult to assess the degree of financial capability and could give rise unintentionally to exclusion and to discrimination if, for example, it was based on consumer's level of education. One respondent stated that it would be difficult to assess financial capability and consumer characteristics during the entire product life cycle unless the consumer provided information. A second respondent suggested that the manufacturer could use information from consumer feedback and complaints when designing new products.</p>	<p>See the EBA’s analysis above in row 17 related to financial capability.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
20)	One respondent commented that the definition of 'target market' in the Guidelines was stricter than the definition used in the ESMA's technical advice on MiFID.	The EBA did not consider this comment because the ESMA's technical advice does not include a specific definition and simply refers to Article 16(3) of the MiFID which includes a reference to 'target market'. The definition of 'target market' included in the Guidelines is based on the definition included in the Joint Position and is quite similar to the reference made in MiFID.	None.
21)	Two respondents questioned whether the proposed Guidelines would turn the concept of target market, which is a marketing/business concept, into a legal term creating compliance risk. One of the respondents stated that identifying a wrong 'target market' currently results in business failure, but these Guidelines will make it a matter of regulatory compliance. On that basis the respondent requested that the EBA clarify how 'target market', shall be understood across markets and jurisdictions, including an indicative list of factors which impact target market delimitation and their hierarchy.	If a consumer is mis-sold a product because of a wrongly identified target market then that consumer may suffer detriment, so consumer detriment is also a result of the wrong target market being identified. Product monitoring helps the manufacturer know if the identified target market is the correct one and if this is no longer the case, then the manufacturer would simply need to take action and, for instance, change the spectrum of consumers included in the target market. The manufacturer would also need to notify this change to the distributor.	None.
22)	Two respondents pointed out that consumers need simple products and that the Guidelines do not refer to simple products. The respondents recommended that the EBA, with the other two ESAs, develop a set of principles to form the basis of an objective test to establish whether a product is simple.	See the EBA analysis under General comments, row 11.	None.
23)	One respondent requested more details on the examples given under good practices for the target market. To ensure consistency and homogeneity the respondent requested that the EBA provide the parameters for the scenarios or simulations where consumers are provided with different general scenarios or simulations of the amount of payment of the loan depending on the variation of the interest rate, as proposed in the consultation paper.	The EBA aims for these Guidelines to strike the appropriate balance between precision and flexibility. The risk with adding numerous examples is that these may constrain innovation and flexibility.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Question 7. Do you agree with Guideline 4 on product testing?</b>			
1)	<p>Two respondents stated that many retail banking products are simple and well established, and that new developments are mainly enhancements to product features and updates to technology. One respondent commented that, for smaller institutions with simple products, these Guidelines would lead to a process that is artificially complex without adding value. It was also stated that for products with risks such as fraud and breach of security, it is more important to identify risks and solutions than to conduct product testing. Another respondent suggested that product testing should consider the nature of the products and their complexity and that testing should be restricted to only the most complex products. Therefore, these Guidelines should be proportional. Two respondents commented that given the comparatively low complexity of retail products, for proportionality, there should be exceptions for some new products. The respondent pointed out that there is no definition of 'new products' in the Guidelines and suggested the following wording for a definition (the wording of two respondents has been combined):</p> <p>'A product shall be considered as a new product, when the creditor/supervised entity does not already/yet have sufficient knowledge and experience in order to appropriately handle the product launch/business and all related processes.'</p>	See the EBA analysis on under General comments, row 11.	None.
2)	<p>Seven respondents stated that retail banking products are already tested by all/many firms before they are proposed to the market. Respondents expressed the views that to introduce formal obligatory testing for every product, including new editions of existing products, would create unnecessary costs exceeding the added value for customers, delay the time that it takes to get a product to market, impede innovation and inhibit new market operators. They also stated that it is in the economic interest of banks to offer only products that appeal to consumers and</p>	<p>The EBA is pleased to hear that product testing is already a feature of many financial institutions' product design and development processes as this will limit the impact on them in complying with this Guideline. The EBA considers the Guidelines to be proportionate to the level of complexity of the product. Many product approval (and testing) processes followed by manufacturers to date are focused on the prudential needs of the manufacturer. The aim of these Guidelines is to change these processes so that product design and</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>that are based on consumer demand and on a comprehensive market and risk analysis.</p>	<p>testing processes also consider the needs of consumers.</p>	
3)	<p>Two respondents stated that scenario testing is more appropriate for investment products and that simple products should be excluded from the scope of application of the Guidelines. It was also stated that scenario testing will be regulated for relevant products within PRIIPS at Level 2. Product testing should only be required if it is applicable to the product. One respondent stated that the assessment should be conducted jointly by the manufacturer and distributor and undertaken according to the recently adopted regulations and guidelines, such as internal governance, operational risk, etc. The respondents suggested the following re-wording of Guideline 4.1:</p> <p>'Before a product is designed and brought to the market; an existing product is sold to new target markets; or significant changes to an existing product are introduced, the manufacturer jointly with the distributor should conduct product testing, if it is applicable, in order to be able to assess how the product would operate and affect its consumers under a wide range of scenarios, including stressed scenarios.'</p> <p>One respondent commented that product testing at the level of the target market is inherently inconsistent. For a wide target market with little granularity the results of product testing would add little value. In relation to stressed scenarios the same respondent commented that the information required to conduct testing on stressed scenarios, e.g. income, assets, family situation for a credit agreement, would be very close to being a stress test of an individual's situation.</p>	<p>See the EBA analysis under General comments, row 11.</p>	<p>None.</p>
4)	<p>One respondent stated that products existing at the moment of entry of these Guidelines into force should also be tested and, furthermore, that manufacturers should consider the design and marketing of simple products that can be easily understood by all consumers.</p>	<p>Regarding the application date, see the EBA analysis under General comments, row 6. In addition, the Guidelines could be used in the development of simple products but they are not limited to them.</p>	<p>None.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
5)	One respondent expressed the view that an overly conservative/risk-avoidant approach could be the result of assessment and changes to products because institutions were concerned about potential liability issues.	The EBA considers that eradicating problems or design flaws from products at an early stage will improve the offering to consumers. The purpose of these Guidelines is to prevent mis-selling which in turn should reduce detriment to consumers and therefore cut down on complaints, legal cases, etc.	None.
6)	One respondent stated that the testing methodology may only be as effective as the last product tested and having to update it after each testing, to take account of lessons learned, would delay a product being brought to market, which would impact on institutions' ability to secure advantage over other institutions and impede innovation.	The Guidelines do not prescribe testing methodologies, but the EBA considers that it is good practice, and possibly standard practice within the testing industry, to update methodologies as required. Regarding the suggestion that this Guideline will lessen financial institutions' ability to produce innovative products, the EBA considers that eradicating problems or design flaws from products, including innovative products, at an early stage will improve the offering to consumers. The purpose of these Guidelines is to prevent mis-selling, which in turn should reduce detriment to consumers.	None.
7)	<p>One respondent expressed the view that there are a number of challenges to the proposed approach which should be considered:</p> <ul style="list-style-type: none"> <li>i. Would the operation and design of internal testing need to stand the test of time?</li> <li>ii. Testing is already carried out in most cases except for deposits. Does the proposed approach make economic sense? How does it relate to capital and liquidity, credit risk and market risk? How does it fit with conduct of business rules?</li> <li>iii. Product testing must complement the existing credit stress testing and underwriting process.</li> <li>iv. Clarification is required on the new product approval policy.</li> </ul>	The EBA understands that any assessment will be made at a given point in time but the feedback loop built into the POG Guidelines allows the assessment to be revisited. The EBA considers the cause for the Guidelines is made in the Impact assessment and by the need to provide a conduct-risk focus where this currently seems to be lacking.	None.
8)	One respondent requested that the EBA clarify that product testing refers to computerised simulations not tests with natural persons. Another	The EBA intends the Guidelines to strike an appropriate balance between being high level and detailed. It is considered that	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>respondent commented that the effect on each consumer is subjective and that testing should be on how the product operates under different kinds of scenarios. A third respondent commented that for thirty year mortgages, for example, it is difficult for the creditor to predict the borrower's financial circumstances for the mortgage duration; for variable rate mortgages 30 year scenarios would be difficult to develop and possibly misleading, and for fixed rates scenarios they would be less relevant.</p> <p>One respondent commented that 'wide range of scenarios' is very broad and, should be better defined and that scenarios should be well calibrated according to the type of product so as not to intimidate the consumer. The respondent suggested the following re-wording to Guideline 4.1:</p> <p>'Before product is designed and brought to the market; an existing product is sold to new target markets; or significant changes to an existing product are introduced, the manufacturer should conduct product testing, in order to be able to assess how the product would affect its consumers under a wide range predefined reasonable number of scenarios, including stressed scenarios so that the risk/reward profile is properly captured. Manufacturers should make appropriate product changes where the scenario analysis gives rise to poor results for the target market.'</p> <p>One respondent requested, for consistency that the EBA provide more precise information and parameters for product testing especially for the wide range of scenarios and the stressed scenarios. The respondent asked also that the EBA specify the term 'poor result'. Furthermore, the respondent recommended that the stressed scenarios be aligned and consistent with those of other exercises, such as those outlined the 2014 EU-wide stress test results. Where such scenarios are disclosed to consumers, they should be based on general assumptions and not on</p>	<p>manufacturers will be best placed to determine (and explain to their supervisors) the most appropriate form of testing, having regard also to the proportionality described in Guideline 1.5.</p>	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	likelihood.		
<b>Question 8. Do you agree with Guideline 5 on product monitoring?</b>			
1)	One respondent commented that product monitoring should be proportionate to the risks and complexity of each product.	See the EBA analysis under General comments, row 11.	None.
2)	Three respondents requested that the EBA provide more guidance on this Guideline, that is, on the specific criteria or parameters that should be monitored, such as consumer complaints, repayment defaults, and early contract terminations. Two respondents commented that the Guideline is vague regarding the frequency of product monitoring as it refers to 'on an ongoing basis'. The respondent suggested that the frequency of monitoring should be proportionate. A further respondent suggested that the wording 'on an ongoing basis' should be replaced with 'periodical basis' as this reflects what is currently happening. Another respondent suggested that it would be an impossible task to ensure that a product continues to meet the interests, objectives and characteristics of a target market, while one respondent asked the EBA for clarification on how this could be achieved.	The EBA is of the view that the Guidelines achieve an appropriate trade-off between the risk of vagueness of high-level standards and the stifling effect of too detailed requirements.	None.
3)	One respondent commented that monitoring needs to be clearly defined with regard to data protection obligations regarding consumer data.	The EBA does not consider that Guideline 5.1 impacts on financial institutions' data protection responsibilities because it refers to monitoring that 'the product continues to meet the interests, objectives and characteristics of consumers' not of individual consumers.	None.
4)	Three respondents commented that firms already monitor products and remove products that no longer appeal to consumers or are no longer competitive. Another respondent stated that they are required to assess whether new regulatory developments impact their product offering. A further respondent agreed with the importance of monitoring products	The EBA is pleased to note that some financial institutions already monitor products because this lessens the impact on them of implementing measures to comply with this requirement.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	but stated that it should be conducted on the basis that the product continues to meet the interests of the consumer generally, not the target market.		
5)	One respondent referred to the external market analysis conducted by, for example, the Federal Statistical Office; and the Bundesbank in Germany, which assists in assessing market developments and changing consumer behaviour patterns.	The EBA accepts that there are sources of information available to financial institutions which can assist them in complying with this Guideline.	None.
6)	Two respondents stated that banks already compare the consumer's needs/objectives with suggested products during the advice/sales process. Therefore, sales figures reflect whether a product is up to the needs of the market.	The EBA accepts that sales figures are one of the sources of data which will assist financial institutions in monitoring products.	None.
7)	One respondent commented that Guideline 5.1 and Guideline 2.2 express the same concept without Guideline 5.1 adding anything further. The respondent suggested that Guideline 5.1 could be deleted.	The EBA disagrees that Guidelines 2.2 and 5.1 are the same. Guideline 2.2 refers to a periodic review of the internal arrangements to make sure that they are up to date. Guideline 5.1 refers to a monitoring of the product (designed following the internal arrangements) once launched, to see if it behaves as expected and whether it continues to meet the needs of consumers.	None.
8)	One respondent is of the view that monitoring a product according to the needs, interests and characteristics of the target market suggests that the product may not be appealing to another market in the future.	The respondent did not provide arguments to support their comment regarding the connection between product monitoring after the product has been brought to market and the launch later of that product to a different target market. Obviously, in launching the product to a new target market the manufacturer must comply with all the steps in the product oversight and governance arrangements.	None.
9)	One respondent stated that the respective monitoring responsibilities should be clearly shared between manufacturers and distributors.	The EBA is of the view that the ultimate responsibility for product monitoring rests with the manufacturer but acknowledges in Guidelines 4.3 and 4.4 that the distributor has a role in providing	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		intelligence to the manufacturer which will assist the manufacturer in monitoring products.	
10)	<p>Two respondents suggested similar changes to this Guideline and these changes have been combined below:</p> <p>‘Once the product is brought to market, the manufacturer should monitor based on the available information or the information provided by the consumer whether the product continues to be appropriate for the target market. The manufacturer should take into account the relevant information received from the consumers when designing new products.’</p>	The EBA does not accept the suggested review as this seems to leave manufacturers with a less active interest in monitoring.	None.
11)	<p>One respondent stated its disagreement with the product monitoring good practice because the origin of changes to charges may not be the known to the manufacturer, in which case the required action would not be possible.</p>	The EBA is of the view that the example does not require changing because the context limits the changes in question to charges within the manufacturers’ control.	None.
<b>Question 9. Do you agree with Guideline 6 on remedial action?</b>			
1)	<p>Three respondents stated that the measures to be taken to rectify problems with products could refer only to market failures, not to individual consumers. Two respondents commented that consumers have the facility to use out of court resolution mechanisms or take civil actions to court to address problems.</p>	<p>The EBA accepts that individual consumers have recourse to various resolution mechanisms and to the legal courts. These Guidelines will not prevent consumers from continuing to be able to avail themselves of those facilities. In fact the EBA is of the view that the data from the collective findings from such mechanisms and from the courts will be very useful to financial institutions in identifying if there are problems in the market with particular products, that is, in complying with Guideline 5.1.</p>	None.
2)	<p>Three respondents stated that firms already monitor and rectify problems with products. Two respondents stated that the reasons for this are reputational damage and the threat of regulatory action. It was also pointed out that national supervisors intervene where there are product</p>	See the EBA analysis under Question 8, row 4.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	failures.		
3)	One respondent, while agreeing with Guidelines 6.1 and 6.2, requested that the Guidelines be amended to be proportionate and argued that the nature of the retail banking products should be taken into account when deciding on remedial action.	See the EBA analysis under General comments, row 11.	None.
4)	Two respondents stated that once a product is sold to a consumer the manufacturer cannot unilaterally change the terms and conditions of the product without prior notice, because of national contract laws. One respondent requested that the EBA provide a clear example of a mitigating action, taking into account national contract law. One respondent suggested that the Guideline should apply to new products not existing products. To that end the following re-wording was suggested:  '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 prevent a re-occurrence of detriment when designing new products for the target market.'	The purpose of these Guidelines is to prevent mis-selling and in doing so to prevent consumer detriment. Where problems that may cause detriment to consumers are identified within a product, the EBA does not accept that financial institutions cannot take action to remedy that detriment within existing laws. The EBA therefore does not agree with the proposed wording to limit action to new products only while existing consumers may continue to suffer detriment.	None.
5)	One respondent stated that the Guidelines should not imply that the consumer should not bear some risk regarding the performance of a long-term product.	The EBA does not consider that POG arrangements will remove all risk from products, because some products by their nature carry some risk for consumers. POG arrangements will, however, prevent products, whether risky or not, from being mis-sold to consumers.	None.
6)	Four respondents commented that given the importance of remedial action the EBA should adopt tougher guidelines. The respondents suggested that the sale of products via distributors should be suspended by the manufacturer if the manufacturer becomes aware that the products are not being sold as envisaged. The respondents also suggested that manufacturer should notify the national supervisor of any remedial action taken so that the supervisor can identify emerging problems and	The EBA is of the view that the Guidelines achieve an appropriate trade-off between the risk of vagueness of high-level standards and the stifling effect of too detailed requirements.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	risks more quickly.		
7)	One respondent stated that the remedial actions to be taken should be a matter of internal commercial policy, not legislative requirements. The respondent commented that ESMA's approach, as set out in its <i>Technical Advice to the Commission on MiFID II and MiFIR</i> , was less burdensome than these Guidelines in that it stated that firms should take 'appropriate action'.	The Guidelines do not prescribe the specific remedial actions that financial institutions should take. The Guidelines do, however, require that financial institutions 'should take the necessary action to mitigate the situation and prevent a re-occurrence of detriment'. The EBA expects that financial institutions would share its view that consumer detriment, where identified, should be actively mitigated and not allowed to continue unabated.	None.
8)	One respondent requested clarification of Guideline 6.3.	The EBA considers the meaning of this Guideline to be clear.	None.
9)	One respondent requested that the good practice example for remedial action be made more specific.	The EBA considers the example to be appropriately detailed and that specifying particular remedial actions would not be in the interests of manufacturers or consumers.	None.
<b>Question 10. Do you agree with Guideline 7 on the selection of distribution channels?</b>			
1)	Eight respondents expressed concerns that Guideline 7.1 might have the effect of constraining the freedom of manufacturers to choose their distribution partners, and limit access for distributors (and ultimately consumers).	The EBA considers that manufacturers have a strong self-interest in ensuring that distributors are able to sell their products correctly. The Guideline is intended to reinforce that.	None.
2)	Four respondents considered that it would be either difficult for manufacturers to ensure distributors' compliance (especially in respect of digital channels) or inappropriate for manufacturers to be held responsible for the compliance of distributors. Linked to this was a concern that manufacturers may be denied the information they need on data protection grounds.	The EBA considers that the Guideline properly captures the obligation on the manufacturer to put POG arrangements in place and then ensure their effectiveness as best they can. This should not be understood as requiring that manufacturers second-guess each sale made by a distributor, and the Guidelines do not require this. Manufacturers will have differing degrees of control over the actions of distributors inevitably the oversight it might be reasonable to expect will be greater with business units of manufacturers that are not involved in the designing of the product but are responsible for	In order to clarify the responsibilities of manufacturers and distributors, Guideline 7.2 was re-drafted as follows:' The manufacturer should monitor that

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>bringing the product to the market. The Guideline has been amended to reflect this.</p> <p>For POG purposes, the EBA considers that the monitoring information a manufacturer is likely to require need not be personal data, although in any event it is likely that consent to provision of personal data to the manufacturer is likely to be a part of every sale. The EBA intends the POG Guidelines to be channel neutral; while digital media offer new channels and means of distribution the requirements set out in the guidelines should be capable of being equally applied.</p>	<p>the products are distributed to the identified target market and sold outside the target market only on a justified basis.’ Deletion of: ‘exceptional’ from previous wording.</p>
3)	<p>One respondent argued that manufacturers should be able to take account of industry standards and codes in their consideration of distributors.</p>	<p>The EBA notes that the Guideline would not prevent a manufacturer considering voluntary industry standards when selecting distributors who have appropriate knowledge, expertise and the capability to correctly to place its products</p>	None.
4)	<p>Four respondents considered greater clarity was needed on the relationship between the requirement for a target market to be defined (Guideline 3.1) and disclosed to a distributor (Guideline 8.3) and the ability for the product to be sold outside of the target market on a ‘justified and exceptional basis’ (Guideline 7.3).</p>	<p>The EBA considers that target market identification is a key component of product design. It will be carried out by the manufacturer to identify one or more groups of consumers, the parameters of these groups being described by the manufacturer. Guideline 7.3 reflects the fact that a distributor may encounter individual consumers outside of these groups for whom the particular product will still meet their interests, objectives and characteristics. Assuming the manufacturer does not prevent distributors from selling outside of the target market for the product, the EBA considers it appropriate that the manufacturer understands where such sales take place.</p>	None.
5)	<p>One respondent argued that existing EU legislation (the MCD) adequately addressed sales.</p>	<p>While some product-specific conduct standards are set out in existing EU law, the EBA considers that this is neither comprehensive nor targeted as an intervention that is designed to</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		prevent conduct risk at source.	
6)	One respondent considered that the accompanying good practice example for distribution channels could be mis-read as implying that there should be no variation between the characteristics of sales by in-house and external distributors.	The EBA confirms that the intention, as set out clearly in the drafting of the good practice example, is to flag that one monitoring tool would be comparable information on sales by in-house and external distributors.	None.
<b>Question 11. Do you agree with Guideline 8 on information for distributors?</b>			
1)	Two respondents highlighted that in respect of Guideline 8.1 the price that a manufacturer is able to disclose may not be the total price for the consumer because the manufacturer would not know the charge(s) imposed by the distributor.	The EBA agrees it is reasonable to limit the disclosure to elements of the total price that the manufacturer knows, or could reasonably be expected to know. The EBA redrafted the Guideline.	Addition of: ‘...the total price of the product (as known, or reasonably expected to be known, by the manufacturer)’]
2)	One respondent considered that the disclosure requirement in Guideline 8.1 was redundant as it replicated the requirements of the Consumer Credit Directive.	The EBA agrees that EU legislation may address some of the disclosure elements in Guideline 8.1 for certain products; however this will not be comprehensive in terms of the disclosure content or the range of banking products covered.	None.
3)	One respondent was concerned that Guideline 8.3 insufficiently distinguished between distributors who are acting on behalf of the manufacturer and those who are acting independently on behalf of the consumer.	The EBA recognises the distinctly different roles played by these two sets of distributors but considers that the information identified in Guideline 8.3 is equally relevant to both.	None.
4)	Two respondents argued that the Guideline should also address the responsibility of the distributor to consider the information provided by the manufacturer.	The EBA acknowledges the importance of distributors making use of the information provided, but this is properly addressed under the guidelines directed at distributors (see Guidelines 3.1 and 4.1).	None.
5)	One respondent objected to the Guideline, believing it imposed an	The EBA considers that the Guideline is part of striking an	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>unwelcome surveillance responsibility on manufacturers in respect of their distributors, and required transparency (the disclosure of internal information on margins and costings) far beyond that expected of other markets. They were also concerned about the resultant impact on products available to consumers, where they feared that the lowest price would outweigh quality considerations.</p>	<p>appropriate balance in the responsibilities of manufacturers and distributors. The requirement for disclosure of price information does not oblige a manufacturer to disclose their internal costings.</p>	
6)	<p>One respondent argued that the information provided under Guideline 8.2 should be limited to commercial information available on request.</p>	<p>The EBA considers that it is the manufacturer's responsibility to determine the information that distributors require in order to understand and place any product properly in the market. The distributor should not be required to identify the information it needs in order to do this and to then request this information from the manufacturer.</p>	None.
<p><b>Guidelines regarding the POG arrangements of retail banking products for distributors</b></p>			
<p><b>Question 12. Do you agree with Guideline 1 on establishment, proportionality, review and documentation?</b></p>			
	<p>Most respondents seemed not to disagree with the aim of the Guideline, although some believed that the rules in force are sufficient to govern the distribution of banking products. Some respondents provided some suggestions for improvement.</p>		
1)	<p>Two respondents suggested that the EBA add an additional requirement urging firms to publish their product governance and oversight arrangements (established after these Guidelines); this will make the arrangements subject to greater scrutiny. The respondents were of the opinion that there might be a risk that these principles become a box-ticking exercise. These two respondents also suggested that the EBA ask firms not only to carry out the review of the product governance and oversight arrangements internally, but also to appoint an independent external reviewer.</p>	<p>See the EBA analysis under Question 4, row 3.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
2)	<p>Two respondents suggested adding ‘the risk that the product might pose to consumers’ as an additional feature to be taken into account, as they think that ‘complexity’ is not sufficient to categorise products well.</p> <p>Another respondent was of the view that ‘complexity of products lines, distribution methods and distribution chains’ should not be used for the application of the proportionality clause as these are features that are very difficult to assess.</p>	See the EBA analysis on under General comments, row 11.	None.
3)	<p>Two respondents noted that the wording in Guideline 1.1 ‘to avoid conflict of interest’ might not be entirely accurate; these respondents think that conflicts of interest cannot at all times be avoided and, therefore, suggested amending the wording as follows: ‘to minimise conflicts of interest’. One of these respondents also suggested clarifying the wording of Guideline 1 so that it refers only to conflicts of interest that adversely affect the interests of consumers.</p>	The EBA agrees with the comment and changed the wording of the Guideline.	Deletion of: ‘avoid potential’; inclusion of ‘minimise’ and change to the word order of the sentence.
4)	<p>One respondent is of the view that using the same wording in Guideline 1.1 for manufacturers and Guideline 1.1 for distributors may create confusion between the role and liability of each. This same respondent also mentioned that the Guidelines do not reflect the particular characteristics of small firms and suggested amending the wording so that small intermediaries can comply with them.</p>	The EBA is of the view that the distinctions between the roles and liabilities of manufacturers and distributors are clearly established by the words ‘to their size and to their role of bringing products to the market’.	None.
5)	<p>Four respondents are of the view that no additional requirements for distributors are needed as there is a large body of legislation already governing the distribution of banking products. One of these respondents specifically mentioned systems of governance as an example of an aspect already covered in the legislation. Two of them simply suggested including an exemption for those distributors that take the form of a ‘credit institution’ and are therefore, supervised. These two respondents think that the additional control and documentation requirements are</p>	These Guidelines are complementary to other EBA guidelines and the EU legislation. As mentioned previously, these Guidelines focus on the design of products for groups of consumers; the bringing of the products to the market and the review of the POG arrangements during the whole existence of the product, i.e. from the introduction of the product to its withdrawal. Furthermore, the main purpose of any EBA guidelines, as established in Article 16 of the EBA Regulation, is to ensure a consistent and uniform application of Union law and to achieve consistent and coherent supervisory	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	particularly unnecessary when the distributor is a credit institution.	practices across the Union. Therefore, these Guidelines are aimed at ensuring that all firms in the EU have similar practices and that consumers across Member States have a similar level of consumer protection.	
6)	Two respondents think that a distinction should be drawn between independent distributors and those cases where the manufacturer itself also acts as a distributor. One of these respondents suggests clarifying that if the distributor pertains to the same legal entity as the manufacturer, then no additional product oversight and governance arrangements should be prepared. Another respondent simply asked EBA to request that distributors align their product oversight and governance arrangements with those of the manufacturer.	See the EBA analysis under Question 11, row 3.	None.
<b>Question 13. Do you agree with Guideline 2 on the distributor's internal control functions?</b>			
1)	One respondent mentioned that GL 44 require firms' management bodies to oversee the overall risk strategy and policies of the institution, and that this requirement should be amended in light of that provision.	The Guideline does not expect the management body to be directly involved in the establishment and subsequent reviews of the product oversight and governance arrangements. However, the Guideline expects the board to have effective control and endorse the product oversight and governance arrangements that are prepared by other parts of the organisation.	None.
2)	Two respondents reiterated previous comments and noted that firms should also be requested to appoint an external reviewer to carry out the periodic review of the product oversight and governance arrangements.	See the EBA analysis under Question 4, row 3.	None.
3)	One respondent suggested that the EBA not define 'senior management' or 'management board', so that flexibility is granted to firms to establish their management bodies in the most appropriate way according to their structure. This same respondent suggested specifying what is meant by 'familiar, appropriately trained and understand the products features'.	See the EBA analysis under Question 4, row 5.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
4)	One respondent mentioned that the Guidelines do not reflect the particular characteristics of small firms and suggested amending the wording so that small intermediaries can comply with them. This respondent mentions, in particular, that most distributors would not have internal control functions.	Regarding proportionality, see the EBA analysis under General comments. In addition, the Guidelines cover all types of distributors and interpret requirements already existing in Union law for internal control functions.	None.
5)	One respondent suggested specifying that when the distributor does not have the legal form of a credit institution, payment institution etc., then the requirements should simply fall upon the manufacturer, which would have to verify that the distributor complied with the POG principles of the manufacturers, and non-compliance could be enforced only against manufacturers.	The EBA is of the view that this comment is addressed in the third paragraph of the Section 4.1.2 – ‘Scope’ of the Consultation paper.	None.
<b>Question 14. Do you agree with Guideline 3 on the knowledge of the target market?</b>			
1)	Four respondents stated that the manufacturer’s information on the target market is a recommendation only, that distributors should make the final decision regarding the target market, and also that the consumer makes the ultimate decision to purchase a product. One respondent stated that the target market should be determined by the manufacturer which would then give indications to the distributor. The respondent stated its view that if the distributor also has to determine the target market then there may be differences between the target market identified by the manufacturer and the target market identified by the distributor. It was also stated that consumers who fall outside of the target market should have the ability to purchase the product if it meets their specific needs and individual circumstances. One respondent commented that the consumer making the final decision on a product is a principle that underpins the MCD.	<p>The EBA broadly agrees with this view because a product should not be sold to a consumer solely on the basis of the consumer being a member of the target market. After determining that a consumer is within a target market, the distributor must still consider information about the consumer's individual circumstances before selling a product. The EBA does not consider that the Guidelines need to be amended to reflect the duty of care in the sales or advice process involving to the individual consumer.</p> <p>In addition regarding the comment that the distributor must also determine the target market, this is not the intention of the Guidelines.</p> <p>See also the EBA analysis under Question 5, row 1.</p>	None.
2)	Two respondents commented that the Guideline should explicitly state that it refers to staff who sell products, that such staff should be	The definition of ‘distributor’ explicitly includes ‘business units of manufacturers that are not involved in the designing of the product	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	adequately trained to identify the target market. The respondent also suggested that the EBA could include a provision in this Guideline that sales staff should not be incentivised to act against the consumer's best interest.	but are responsible for bringing the product to the market.' In response to the comment about sales incentives, the EBA is currently considering work in the area of remuneration, which may include sales incentives.	
3)	One respondent suggested that the Guideline should include a requirement for the distributor to notify the manufacturer if the product is being sold outside of the target market, to allow both the distributor and the manufacturer to decide if sales should be suspended or if there have been any mis-sales. The home state regulator should also be informed. One respondent commented that the distributor should inform the manufacturer's home state regulator if it becomes aware of material impacts on the potential risk to the target market.	Guideline 12.2 requires that 'The distributor should also be able to provide information to justify to the manufacturer why it offered a product to a consumer who does not belong to the target market.' Guideline 12.3 also requires a distributor to collect information on an ongoing basis to assist monitoring by the manufacturer. The Guideline also means that the distributor has to have justifications for such sales available should the manufacturer requests it. National supervisors will be able to seek this information as part of their supervision practices.	None.
4)	One respondent commented that the knowledge of the distributor does not fall within product oversight and governance. The respondent also commented that the EU directives, on which the Guidelines are based, include knowledge and ability requirements.	The EBA considers that effective POG arrangements require manufacturers to satisfy themselves of the knowledge, expertise and capability of distributors. This is addressed in guideline 7.1 for manufacturers.	None.
5)	One respondent stated that distributors cannot comply with this Guideline unless manufacturers disclose to them all material information arising from the process so far, from the design of the product to the selection of distribution channels.	Guideline 8.1 - 8.3 set out the information that should be provided to the distributor by the manufacturer and specifically, Guideline 8.3(b) sets out the information that the manufacturer must provide to the distributor to enable to it 'recognise the target market for which the product is designed, and also to recognise market segments who's objectives, interests and characteristics are considered likely not to be met'. The EBA considers that the distributor, using the information set out in Guideline 8.3(b) and Guideline 3.1 and information gleaned from the consumer during the sales and advice process, determine if the consumer falls within the target market for the product or falls into the group who the product should not be targeted to.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
6)	One respondent requested that the EBA clarify whether POG arrangements should be jointly performed where the manufacturer and distributor are one legal entity.	The Guidelines set out specific responsibilities for manufacturers and distributors. If the manufacturer and the distributor are one legal entity, the manufacturing units within that entity retain the responsibility to comply with Guidelines 1 to 8 of the manufacturers' Guidelines (Title II) but can choose to include the distribution units of the entity in the performance of the POG arrangements, similarly, the distribution units retain the responsibility for compliance with Guidelines 9 to 12 of the distributors' Guidelines (Section 5) but can choose to include the manufacturing units of the entity in the performance of the POG arrangements.	None.
<b>Question 15. Do you agree with Guideline 4 on information?</b>			
1)	Two respondents were concerned that Guideline 4.2 permits a distributor to offer a product to a consumer who is outside of the manufacturer's target market	In limited circumstances, the EBA considers that the distributor should be able to determine that a product is appropriate for an individual consumer even if that consumer is not part of the specified target market.	None.
2)	Two respondents considered that Guideline 4.1 required changing because the manufacturer would not know the total price of the product because they would be unaware of charges made by the distributor.	The EBA considers, as discussed in response to the feedback on Guideline 8 for manufacturers, that there is no obligation on manufacturers to be aware of distributor's costs as part of the POG information requirements.	None.
3)	One respondent considered the information collection requirements in Guideline 4.3 burdensome and impractical for distributors. Conversely, one respondent suggested that the obligation to collect information should be made more compelling.	The EBA is of the view that effective POG arrangements need manufacturers to have a clear view of the product life-cycle, and information from distributors will necessarily be an important part of this. The information captured, and the systems for this, should be proportionate as per Guideline 9.1 for distributors.	None.
4)	Two respondents argued that Guideline 8 (for manufacturers) was unnecessary where the distributor was part of the same company as the manufacturer. A further respondent asked that Guideline 4 specifically	The EBA considers that the information specified in Guideline 8 is equally important in all sales, and would be required by distributors even where they are a separate business unit of a manufacturer. For	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	recognise that manufacturers and distributors may, when part of the same entity, jointly establish appropriate POG arrangements.	distributors that are a separate business unit of a manufacturer, the Guidelines do not preclude joint POG arrangements that cover the responsibilities of both manufacturer and distributor.	
5)	Three respondents viewed the Guideline as requiring interference by the manufacturer in the business of the distributor, one citing a negative impact on competition and possible intellectual property rights and data protection issues.	The EBA considers that the Guideline will not have the suggested adverse impacts. If a distributor were to stop offering a product because its understanding is improved by the manufacturer providing clearer information about the product and the identified target market, this might have a positive consumer outcome. Nothing in the Guideline is intended to conflict with the data protection responsibilities of either manufacturers or distributors, or their appropriate exercise of any intellectual property rights.	None.
6)	Two respondents were concerned that Guideline 4.5 was unclear.	The EBA deleted the Guideline.	Deletion of the Guideline.
7)	One respondent considered that Guideline 4.1 needed amending to clarify that the distributor was expected to disclose the listed information to their consumers rather than the “target market” as a whole.	The EBA disagrees with the comment.	None.
8)	Two respondents considered that Guideline 4.1 was redundant because adequate disclosure was already required under EU legislation, and a further respondent asked for greater clarity as to whether this guideline meant that a firm had to provide further information in addition to that required under EU law.	The EBA notes that EU legislation may already require the provision of certain information, as is acknowledged in the Guideline. The information to be disclosed will vary depending on the legislation and product type. The Guideline is intended to supplement this information, where it is required, and to provide for similar disclosure where there is no such current requirement.	None.
9)	Two respondents favoured adding new conduct standards to the Guideline: either that distributors should design their marketing with the target market in mind; or that a distributor should clearly disclose to a consumer where they were being sold a product despite not being part of the target market.	The EBA is of the view that the POG arrangements are separate from any conduct standards that a distributor might apply either to its marketing or to an individual sale.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
10)	One respondent asked that Guideline 4.2 include specific reference to proportionality.	See the EBA analysis under General comments, row 11.	None.
11)	One respondent objected to the Guideline, believing it imposed an unwelcome surveillance responsibility on manufacturers in respect of their distributors, and required transparency (the disclosure of internal information on margins and costings) far beyond that expected of other markets. They were also concerned about the resultant impact on products available to consumers, where they feared that the lowest price would outweigh quality considerations.	See the EBA analysis under Question 11, row 5.	None.

## Draft cost-benefit analysis / impact assessment

### Introduction

2. Article 16(2) of the EBA Regulation provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any 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 therefore presents an impact assessment of these Guidelines on product oversight and governance arrangements for manufacturers and distributors of retail banking products.

### Problem definition

3. The market for retail financial products and services is prone to specific failures, in particular due to information asymmetries.<sup>12</sup> In addition, costs and benefits from mis-sold financial products tend to be distributed rather unequally. Mis-selling can detrimentally affect a large number of consumers, causing small costs for them individually. The individual consumer has, therefore, little incentive to seek redress. At the same time, total profits for financial institutions can be very high. This combination entails the risk of financial institutions intentionally exploiting consumers’ behaviour. Conduct failure can also damage consumers’ confidence and financial markets’ integrity.
4. The potential risks to the financial system of widespread misconduct of financial institutions have been identified and analysed in various reports by European<sup>13</sup> and national<sup>14</sup> competent authorities. Recent reports identify a widening number and magnitude of incidents of mis-selling of financial products and concerns about insufficient provisions and inadequate disclosure prevail. The negative effect on institutions’ profitability is increasingly subject to supervisory scrutiny.
5. According to a recent study, 10 major global banks from 2008 to 2013 have incurred conduct-related costs of around EUR 170 billion.<sup>15</sup> At end 2013, their provisions for future costs stood above EUR70billion. More than 40 % of the total costs were related to banks’ conduct with non-US consumers.
6. At the same time, the results of a survey conducted by the EBA reveal significant heterogeneity as regards the existence, level of compulsion and detail of current national

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<sup>12</sup> European Parliament (2014), Consumer Protection Aspects of Financial Services

<sup>13</sup> EBA (2014), Consumer Trends Report 2014; EBA (2014) Risk Assessment of the European Banking System, EBA / ESMA / EIOPA (2014), Joint Committee Report on Risks and Vulnerabilities in the EU Financial System

<sup>14</sup> Bank of England (2014), *Financial Stability Report- June*, Financial Conduct Authority (2014), *Risk Outlook 2014*;

<sup>15</sup> CCP Research Foundation (2014), *Conduct Costs Project*, at <http://conductcosts.ccpresearchfoundation.com/>

requirements related to product oversight and governance arrangements.<sup>16</sup> Whereas a few Member States confirm already having implemented restrictive requirements at national level, the majority of Member States have implemented no arrangements, or only very limited (regarding scope and/or level) arrangements, governing the manufacturing and distribution of retail banking products. Some have issued only non-binding guidance or have only more general, high-level governance requirements in place.

7. Even Member States that are home to a relatively large number of manufacturers of banking products (> 500) do not necessarily require strict regulatory product and governance arrangements. Except for European legislative obligations regarding disclosure, hardly any Member States apply requirements to distributors of banking products.

### Policy objective

The primary high-level objective of these Guidelines is the protection of consumers from detriment in retail financial markets. This is expected to contribute to improving the confidence in these markets and in the integrity of the financial system in general. More specifically, these Guidelines aim to correct failures and reduce information asymmetries and information costs in retail financial markets. They are drafted to mitigate moral hazard and solve conflicts of interest and principal-agent problems associated with those market imperfections and behaviour patterns.

At the operational level, these Guidelines – by establishing requirements on the oversight and governance arrangements in the development and selling of banking products and services – intend to ensure that manufacturers’ and distributors’ provision of products and services meets consumers’ objectives. The design and bringing to market of products should have adequate structures and processes in place to reduce the misalignment between firms’ and consumers’ interests.

Given the existing limits to the financial capabilities of consumers, these Guidelines aim in particular at the protection of consumers from being offered or sold inadequate products. For that purpose, the requirements contained in these Guidelines intend to make the manufacturers and distributors – and their management – assume more responsibility for placing products on the market, mainly through the proper identification of the target market. Operationally, these Guidelines envisage product oversight and governance arrangements becoming an integral part of financial institutions’ risk management and internal control systems.

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<sup>16</sup> In order to inform the cost-benefit analysis for these Guidelines, in August 2014 the EBA conducted a survey amongst NCAs which focused on existing arrangements in the different Member States. Seventeen Member States provided information.

## Baseline scenario and options considered

The baseline scenario – relying on financial institutions and consumers to correct the above-mentioned market failures and behavioural biases – would coincide with the do-nothing option to

- abstain from regulatory intervention (Option 1)

Without policy intervention, the problems described above would persist. More precisely, the significant costs related to conduct failure of financial institutions could continue to negatively affect their profitability and solvency. Similarly, the depressed confidence of consumers would most probably prevail, resulting in a dampening of the demand for banking products.<sup>17</sup> Overall, without financial supervisors taking action, financial institutions' conduct failure would negatively impact the effectiveness and efficiency of the functioning of the EU financial market.

With respect to the extent to which these Guidelines' requirements cover the lifecycle of banking products, the EBA could either choose to

- issue Guidelines establishing requirements on the manufacturing of banking products only (Option 2);
- issue Guidelines establishing requirements on the distribution of banking products only (Option 3);
- issue Guidelines establishing requirements on both the manufacturing and distribution of banking products (Option 4).

8. The costs of implementing these Guidelines will increase with the extent to which the requirements cover the banking products' life cycle. Requirements covering only the distribution of banking products would be the least costly to implement, requirements targeting only the manufacturing of banking products more costly and the inclusion of both phases of the product lifecycle the most costly option.

9. Benefits would be inversely distributed, with Option 3 being of the most limited benefit and Option 4 being the most beneficial one. Option 3 would not tackle the design of the product and would maintain manufacturers out of related responsibility. Product oversight and governance is intended to involve manufacturers in a fair designing of products, taking into account end-consumers.

10. NCAs responding to EBA's survey indicated that there are many times more distributors than manufacturers of banking services registered in their jurisdictions to which the Guidelines might apply. Consequently, the number of institutions affected by the issuance of these Guidelines increases significantly with the extension of these Guidelines to include requirements on manufacturers as well as on distributors. Option 4 would imply higher costs

<sup>17</sup> EC: Eurobarometer on Retail Financial Services (2012), EC: Monitoring Consumer Markets in the European Union 2013

for financial institutions and NCAs to implement and monitor compliance with these Guidelines. In a similar way, the beneficial effects of these Guidelines – accruing mostly to consumers – would be highest when including requirements on manufacturers as well as on distributors of banking products. According to the NCAs’ responses to the EBA survey those benefits of these Guidelines are expected to be related to the governance and oversight arrangements for both the distribution and the manufacturing of banking products. In order effectively to promote consumer protection and mitigate the risk of retail conduct failure, the issuance of Guidelines entailing requirements for manufacturers as well as distributors of banking products is the preferred option (Option 4).

### **Analysis of overall costs and benefits of these Guidelines**

Overall, the costs and benefits of the policy choice (Option 4) would be unequally distributed across stakeholder groups as well as across Member States. For NCAs, the costs of implementing these Guidelines (one-off costs) and supervising compliance (ongoing costs) would depend on the current national regulatory framework and the national characteristics of the retail market for banking products. NCAs’ responses to the EBA’s survey indicate that the implementation of these Guidelines would require roughly between zero and five additional staff members to be employed. On average the costs for NCAs of choosing Option 4 can be considered to be low.

In a similar way, the costs for financial institutions of implementing these Guidelines would depend on the current national regulatory framework and the national characteristics of the retail market for banking products. For financial institutions currently acting without national regulatory requirements on product oversight and governance in place and in large markets for retail banking products, the costs of implementing these Guidelines will be higher.

Given the level of detail and restrictiveness of the requirements entailed in these Guidelines and the scope across institutions and product lifecycle chosen, these costs for financial institutions would be of medium level. Those costs would include one-off and ongoing costs and fall into a broad range of categories<sup>18</sup>. The most important cost categories affected by the requirements entailed in these Guidelines would include costs for product development and market research, costs for the documentation of the implemented arrangements and disclosure of product information, and HR costs (training of sales staff and resources at management level).

However, parts of these costs may be absorbed within some financial institutions as a result of similar functions being performed by departments responsible for product development, marketing or other related functions. In addition, those costs should be compared to the current very significant amounts paid by a large number of financial institutions to redress and compensate for mis-selling of financial products and other conduct-related costs. Assuming compliance with these Guidelines, the costs of their implementation would outweigh the costs resulting from retail conduct failure observed in recent years. Regarding the material risks to solvency that large-scale conduct-related costs can cause to financial institutions, the

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<sup>18</sup> FSA: Retail Product Development and Governance – Structured Products Review (2011)

implementation of these Guidelines could generally be expected to contribute to the promotion of fair business conduct and sustainable business models in banking.

The largest benefits of the implementation of these Guidelines would effectively accrue to consumers of banking products. The implementation of these requirements by manufacturers and distributors of banking products would reduce consumers' risk of facing detriment and increase their trust in retail financial markets. Consequently, consumers could be expected to more confidently demand and enjoy the benefits which financial services generally may offer to them. Those beneficial attributes could be related to the smoothing of private households' income streams over their lifetime or their insurance against severe adverse risks.

In addition, the requirements entailed in these Guidelines would particularly protect consumers from being offered or even sold products which do not meet their actual needs and would reduce excessive product variety and information costs. Those benefits would most probably by far supersede the moderate increases in prices which might result from financial institutions trying to passthrough at least fractions of their costs related to the implementation of these Guidelines.

Finally, the results of the EBA's survey mentioned above demonstrate the case for an EU-level initiative on governance and oversight arrangements. Bearing in mind the general objectives of promoting the internal market for banking products and ensuring a level playing field in the EU, there are significant benefits to be reaped by the harmonisation of supervisory practices in the EU. These EU-level Guidelines will for the first time establish common regulatory requirements to address conduct risk.

Overcoming the current differences in product oversight and governance arrangements across Member States implies that financial institutions do not need to incur costs for tailoring their processes to different frameworks across Member States, thus producing economies of scale for financial institutions. In a similar way, consumers can build on an equal level of protection in the EU wherever they purchase a retail banking product. These Guidelines are conceptually consistent with similar guidance applied to the insurance and securities sectors. All in all, these Guidelines benefit confidence in the financial system and improve its functioning and service to the EU economy at large.

## Good practice examples

Good practice examples relate to the conduct of manufactures' and distributors' tasks towards particular product oversight and governance arrangements that, if applied, will enhance consumer protection and will, as such, also contribute to ensuring the effectiveness of the financial system more generally. These approaches are considered good examples and are aimed at promoting common practices amongst financial institutions. Competent authorities are likely to want to consider how the good practices, alongside measures already in place or to be implemented, might support their own national supervisory objectives.

The EBA has identified several good practice approaches and they are listed in this section after the relevant requirement.

### Good practice examples for manufacturers

#### Establishment, proportionality, review and documentation

A limit for regular review and update could be established, and/or factors that are relevant to the regularity of the review should be identified, e.g. significant changes in retail strategy, complexity of the product lines, complexity of distribution methods and distribution chain.

#### Target market

Manufacturers could consider the following:

- (i) tax status implications for different products,
- (ii) level of risks of the product to be designed,
- (iii) liquidity accessibility that the consumer is expected to get,
- (iv) level of risks that the consumer is willing to bear,
- (v) demographic factors,
- (vi) level of knowledge and understanding of the complexity of the product, or
- (vii) potential creditworthiness of the consumer or financial capability of the consumer.

Consumers could be provided with different scenarios or simulations of the amount of payment of the loan depending on the variation of the interest rate.

In the case of deposits, an assessment could take account of the various competing product features, such as accessibility, yield and security, and whether the combination of these met said interests, objectives and characteristics.

### Product testing

In the case of a loan with a variable interest rate, the assessment could include the borrower's repayment requirements at reasonably higher interest rates.

### Disclosure

In the case of a deposit, this could include, but it is not limited to, the accessibility, yield and security of the funds, as well as any guarantee scheme that might apply.

### Product monitoring

The manufacturer could make changes to product features such as charges, interest rates, and applicability of protection schemes only if such changes were consistent with the interests, objectives and characteristics of the target market.

### Remedial action

A remedial action could be taken when the product no longer meets the general needs of the target market or when the product performance significantly differs from what the manufacturer originally expected and in a way that causes consumer detriment.

### Distribution channels

In the case of mortgages or consumer credit, the manufacturer could monitor the sales volumes across various risk characteristics, such as loan-to-income ratios and loan-to-value ratios; and, where possible, conduct a comparison of such characteristics between sales made by its own staff and those made by external distribution channels.

## Good practice examples for distributors

### Knowledge of the target market

In the case of deposits, the distributor could take account of the various competing product features, such as accessibility, yield, and security, and whether the combination of these meet said interests, objectives and characteristics.

Information In the case of a deposit, this could include, but it is not limited to, the accessibility, yield and security of the funds, as well as any guarantee scheme that might apply.

## Next steps

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The Guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the Guidelines will be two months after the publication of the translations. A compliance table will be published on the EBA website after the expiry of the two-month period according to Article 16(3) of the EBA Regulation.

The Guidelines will apply from 3 January 2017.