

Banking Stakeholder Group's response to Consultation on the revision of the Guidelines on product oversight and governance arrangements for retail banking products to take into account products with ESG features and greenwashing risks

The BSG considers that the proposed revision of the Guidelines (GL) on product oversight and governance (POG) arrangements for retail banking products to take into account products with ESG features and greenwashing risks is a necessary step, aligning and updating those GL with the regulatory framework. The GL were dated of 2016, therefore an update was required to bring them to fit under rules and regulations that have since been introduced or will be coming into force soon. Some BSG members support the update and have therefore no additional comments to the proposed changes and targeted amendments proposed by the EBA. Some BSG members have a different view and would like to take this opportunity to provide their comments and suggestions.

1. Background

The EBA issued in 2016 Guidelines (GL) on product oversight and governance (POG, EBA/GL/2015/18) for manufacturers and distributors of the retail banking products that fall within EBA's regulatory remit, namely mortgages, personal loans, deposits, payment accounts, payment services, and electronic money. These GL were issued after developments in 2015 showed failures in the conduct of financial institutions towards their customers had caused significant consumer detriment, undermined market confidence and could in extremis also lead to financial instability.

The objective of the POG Guidelines was for manufacturers and distributors to consider the needs of their customers when designing products and to develop products with consumers' interests, objectives and characteristics in mind. The legal basis laid within the meaning of Article 74(1) of

Directive 2013/36 (Capital Requirements Directive, CRD IV) to lay down principles intended to ensure effective processes to identify, manage and monitor risks as well as adequate internal control mechanisms.

Regarding legal developments, the EBA identifies five events that implied the necessity to update the GL on POG:

- the EBA issued, on 4 June 2024, a final report on greenwashing monitoring and supervision⁵, in response to a request that the European Supervisory Authorities had received from the European Commission to provide sector input on greenwashing issues;
- the Capital Requirement Directive (CRD)⁷ and the Capital Requirements Regulation⁸ (CRR) had adjustments made to several existing articles, and new provisions were introduced, in relation to the current and forward-looking impacts of ESG risks;
- the cross-sectoral Directive on unfair business-to-consumer commercial practices (Directive 2005/29/EC) has been amended, in 2024, in order to address commercial practices that mislead consumers and prevent them from making sustainable consumption choices;
- after the review of the European Supervisory Authorities Founding Regulations in 2019, the scope of the EBA founding Regulation (EU 1093/2010) was extended to the Consumer Credit Directive 2008/48/EC which explicitly brought credit as defined in the Article 3(c) of this Directive into the EBA's regulatory remit; and
- the EU has established a legislative framework to boost the energy performance of buildings, that includes the Energy Performance of Buildings Directive (EU/2024/1275) and the Energy Efficiency Directive (EU/2023/1791).

Since the application of the GL on POG, in 2016, the EBA carried out two reviews into how the GL were applied by the industry, which the EBA published in the form of reports in July 2019 and November 2020 respectively.

Given these recent developments and the increasing risk of consumer detriment if financial institutions fail to comply with the highest standards of business conduct when offering product with ESG features, the EBA concluded that a revision of its existing POG Guidelines of retail banking products is needed. It is therefore proposing in this consultation paper to revise the POG Guidelines with the aim of making more explicit in the existing requirements ESG and greenwashing considerations as and when products with ESG features are offered and sold to consumers.

2. BSG response to the Consultation Paper (CP)

The BSG would like to respond to the CP's questions. Some BSG members agree with the approach taken by the EBA. They believe that the amendments in this update are necessary to align the GL, which date back to 2016, with the regulatory framework. They support the draft GL as proposed by the EBA and have no material objections to the proposed revisions.

Other members consider that the introduction of further amendments to the POG guidelines risks creating unnecessary complexity. They note that the EBA was not explicitly mandated by the European Commission or EU co-legislators to issue or revise guidelines on product oversight for retail products, but instead retains discretion to update the guidelines by virtue of Article 74 of the Capital Requirements Directive. They argue – in the context of simplification and to support the competitiveness of European banks – that the burden of frequent legislative changes should be

avoided and would therefore encourage the EBA to promote legal stability by keeping revisions strictly necessary and focused on ensuring alignment across different legislations.

Concerning the revised POG guidelines' date of application, these BSG members also consider that for small and non-complex institutions (SNCI) the revised POG guidelines should not apply before the date of application of the EBA guidelines on the management of ESG risks, which is January 11, 2027.

Question 1. Do you have any comments on the targeted amendments and consequential changes made to Chapter 2 of the POG Guidelines on 'subject matter, scope and definitions'?

The BSG supports the inclusion of non-bank creditors within the scope of the guidelines, in line with the 2023 Directive (EU) 2023/2225 on credit agreements for consumers (Consumer Credit Directive). This should also go for credit intermediaries falling under the scope of the MCD. In our view, it is essential to establish a level playing field among all providers of retail products. Ensuring that non-bank creditors are equally subject to sound guidelines and requirements in terms of product governance is also key to preventing over-indebtedness and bad lending practices as well as fostering greater consumer trust in the market.

Some BSG members agree with the targeted amendments and consequential changes made. Others however believe that it would be necessary, particularly for products within the scope of these EBA guidelines (especially traditional lending rather than securities business) to outline, at least by way of example, what is meant by a product's 'ESG characteristics'. While this maybe evident in some cases, in others (e.g., payment transactions or deposit business), it is not necessarily so.

The general reference to the new EBA Guidelines on the management of environmental, social and governance (ESG) risks (EBA/GL/2025/01) (ESG risk guidelines) supplementing the existing EBA POG guidelines should be supplemented by a reference to the specific relevant sections. Some members of the BSG note that the ESG risk guidelines mentioned in the POG's guidelines consultation paper are very comprehensive and only partially relate to the consumer protection issue of greenwashing. They note, furthermore, that the requirements relating to greenwashing are mentioned in the ESG risks guidelines exclusively in paragraph 76 of section 5.6.4 on operational and reputational risks. Some members of the BSG would like to add that, in principle, the revised POG guidelines do not differentiate between SNCI and other non-large institutions in terms of intensity or scope (unlike the ESG risk guidelines). They would suggest doing so to take appropriate account of the principle of proportionality in this area.

Question 2. Do you have any comments on the targeted amendments made to Guidelines 2, 3, 7, 8 and 12?

Some BSG members agree with the targeted amendments made.

Other BSG members note that products with 'ESG characteristics' must also be considered. They would suggest clarifying this term for all retail banking products, as mentioned in our response to the Question 1 above. With regard to Principle 2.1a, these members consider it unnecessary to introduce a separate obligation for management to implement appropriate processes for managing greenwashing risks in relation to the products covered by the POG guidelines. They are of the view that the obligation to implement appropriate risk management processes for operational and reputational risks, including greenwashing, is already derived from other EBA guidelines. They believe, furthermore, that Principle 12.1a (distributor obligations) should not include an additional reference to the EBA guidelines on the management of ESG risks, as this is not included in Principle 8.3 c) (manufacturer obligations). They argue that the distributor will regularly rely on the

information provided to it by the manufacturer about the product in accordance with the requirements of Principle 8.3.

Question 3. Do you have any comments on the consequential changes made to chapter 6 of the POG Guidelines on ‘third-party arrangement’?

Some BSG members agree with the consequential changes made. They note that supply chains in the financial sector have become more complicated in recent years, and transparency must be maintained to ensure effective supervision. They note that the regulatory boundaries between the supervisory perimeter of financial services and third parties is often difficult to draw and welcome the EBA’s approach to prioritise regulatory and supervisory consistency.

Other BSG members are of the view that it should be clarified first that manufacturers and distributors of products only have to comply with the requirements of the (new) EBA guidelines on third-party risk management (third-party risk management guidelines) if they fall within their scope. They note, in addition, that the reference to the third-party risk management guidelines has expanded the circle of external service providers. Whereas previously the requirements only had to be observed in relation to service providers to whom formal outsourcing had taken place, the term “third party” is now much broader and also includes “other external procurement.” This means that the requirements of the third-party risk management guidelines also apply, for example, to one-off or occasional purchases of services from the perspective of the manufacturer or distributor.

These members consider that such broadening raises concerns about practical implications. They are concerned, in particular, that banks may be discouraged from engaging with new service providers or from entering into one-off or urgent arrangements, to avoid the administrative burden of having to verify the ESG characteristics of providers even for short-term contracts. Therefore, these BSG members oppose this expansion, which does not simplify matters for banks, whereas the European Commission is expected to streamline ESG requirements.