



Comments

EBA Consultation on “Draft Guidelines on product oversight and governance arrangements for retail banking products” (EBA/CP/2014/37)

Register of Interest Representatives

Identification number in the register: 52646912360-95

Contact:

Christiane Bauer

Telephone: +49 30 20225- 5704

Telefax: +49 30 20225- 5705

E-Mail: christiane.bauer@dsgv.de

Berlin, 15-02-06

Coordinator:

German Savings Banks Association
Charlottenstrasse 47 | 10117 Berlin |
Germany

Telephone: +49 30 20225-0

Telefax: +49 30 20225-250

www.die-deutsche-kreditwirtschaft.de

Fließtext

Comments: EBA Consultation on “Draft Guidelines on product oversight and governance arrangements for retail banking products” (EBA/CP/2014/37)

General questions

Q1: Do you agree with the proposed approach of capturing the entire product life cycle by covering distributors as well as manufacturers?

Generally, the question arises whether it is really necessary to subject the retail banking products relevant to this EBA consultation, which predominantly cover basic needs in the provision of banking services and whose fundamental product features have been established on the market for a considerable number of years, to such extensive monitoring and documentation. The German Banking Industry Committee is of the opinion that the products relevant to this EBA consultation, such as savings deposits, payment accounts, payment services or payment instruments, which have been on the market for decades and whose level of complexity is low, do not require further regulation.

We are convinced that the cost of implementing and monitoring the envisaged supervisory regime by far exceeds the resulting benefit for the consumer. Consequently, we urgently recommend that a cost-benefit analysis be carried out as part of any consideration of required measures.

The type of regulation envisaged by EBA almost borders on structural policy and contains centralistic ambitions that are contradictory to market economic principles. We reject such ambitions as a matter of principle. Up until now, the products in question have also been manufactured by smaller credit institutions without outside assistance. The envisaged regulation risks causing a withdrawal of smaller institutions from the market for regular financial products.

A plethora of regulations already governs the design and distribution of the products in question, among them the “Consumer Credit Directive” (CCD), the “Mortgage Credit Directive” (MCD), MiFID II, the “Payment Account Directive” (PAD) and the “Payment Services Directive” (PSD). We believe that further requirements for manufacturers and distributors are unnecessary.

Principally, we are of the opinion that consumers are adequately protected by existing regulations and national requirements. It is important that the consumers’ freedom to take their own decisions will not be curtailed. Overly restrictive requirements at the manufacturing and distribution level ultimately reduce consumer choice and are likely to further slow down innovation speed and propensity, thus contravening a frequently quoted objective pursued by the European Commission and the European Central Bank.

All market economies entail the fundamental risk that an existing product may fail to satisfy the supplier’s and/or the consumers’ expectations towards the end of its lifecycle. This risk must simply be accepted by all stakeholders and can ultimately not be avoided by the envisaged guidelines. After all, consumers are largely protected against risks and total loss by existing liability instruments and low liability limits.

Should further regulation still be considered, it should rather take the form of recommendations (perhaps as “EBA Opinions”).

Q2: Do you agree with the delineation of the two sets of requirements for manufacturers and distributors?

As stated in our answer to Q1, the German Banking Industry Committee is of the opinion that the long-standing products which are the subject of this EBA consultation, for instance savings deposits, payment

Comments: EBA Consultation on “Draft Guidelines on product oversight and governance arrangements for retail banking products” (EBA/CP/2014/37)

accounts, payment services or payment instruments, do not require further regulation. We are convinced that the cost of implementing and monitoring the envisaged supervisory regime by far exceeds the resulting benefit for the consumers and urgently recommend that a cost-benefit analysis be carried out as part of the consideration of any required measures. We are furthermore of the opinion that existing regulations and national requirements provide adequate protection for consumers.

We consider the requirements for manufacturers to be a matter of course as regards the typical activities carried out by manufacturers. For instance, number 2.4 states that staff involved in designing products should be competent and appropriately trained and be familiar with the product's features, characteristics and risks. All product designers should meet these requirements, both in their own interest and in the interest of maintaining competitiveness, making additional regulations in the context of the Guideline superfluous.

However, should such regulations, which we consider unnecessary, be issued nevertheless, we believe that the creation of a level playing field is absolutely essential. We are concerned that the Guidelines will fail to cover the structures that are not subject to banking supervision today and suggest that exemptions should be considered for supervised credit institutions and their staff to avoid adding to their burden.

Q3: Are there any additional requirements that you would suggest adding to either of the two sets of requirements? If so, why?

No.

Specific questions regarding Guidelines for manufacturers (Title II)

Q4: Do you agree with Guideline 1 on establishment, proportionality, review and documentation?

As stated in our answer to Q1, the German Banking Industry Committee is of the opinion that the long-standing products which are the subject of this EBA consultation, for instance savings deposits, payment accounts, payment services or payment instruments, do not require further regulation. We are convinced that the cost of implementing and monitoring the envisaged supervisory regime by far exceeds the resulting benefit for the consumers and urgently recommend that a cost-benefit analysis be carried out as part of the consideration of any required measures. We are furthermore of the opinion that existing regulations and national requirements provide adequate protection for consumers.

There are two main reasons why we consider the establishment of the envisaged regulations for manufacturers unnecessary.

Firstly, the implementation process fails to reflect the very low level of complexity of retail banking products, such as savings deposits or payment accounts, which is explicitly required of manufacturers in paragraph 1.5 of the Guidelines. We consider the need for governance arrangements for the products in question to be particularly low, especially with reference to manufacturers as mentioned paragraph 1.5 of the Guidelines. In this respect, the fundamental principle of proportionality applicable to legislation at the EU level is not given sufficient consideration.

Comments: EBA Consultation on “Draft Guidelines on product oversight and governance arrangements for retail banking products” (EBA/CP/2014/37)

With regards to the product approval process, we would like to point to the German banking supervision’s respective minimum requirements. These requirements provide for a proportional product approval process that is commensurate with the inherent risks.¹ Accordingly, the scope of the process, including any test runs, depends on the type of product and on any existing and proven knowledge regarding the product’s handling. For instance, a product approval process is not required if all organisational units involved in the respective work processes are of the opinion that the institution is capable of appropriately handling all activities relating to the new product or market. This may apply to new products that are merely combinations of existing standard products or to product modifications that do not imply a significant increase in risk.

With the exception of new trading transactions, the German regulations principally do not provide for more extensive requirements, e.g. product tests. In contrast, we believe that the requirements described by EBA aim to apply the extensive requirements to all products. This is in contravention of the principle of proportionality. New product launches in retail banking principally result from perceived changes in customer needs. Hence, in the case of new retail banking products, both the target group and the interests of the respective consumers are known from the beginning and the product is tailor-made to suit them. Separate target group analysis or product tests involving an additional bureaucratic process structure based on the proposed EBA Guidelines are thus unnecessary.

Secondly, we believe that the guidelines for manufacturers do not sufficiently reflect the fundamental principle of subsidiarity. Due to consumers’ negative experiences during the financial crisis, the simultaneous increase in transparency on the retail banking market and growing competitive pressure, manufacturers now find it more essential than ever to design financial products that generate the greatest benefit for the consumer, avoid any conflicts of interest and fully meet the consumer’s objectives, needs and financial capabilities. Consumers can take advantage of a plethora of (electronic) test portals which provide quick and reliable information on product features as well as product advantages and disadvantages. Manufacturers can thus not afford to design financial products that may be detrimental to the consumer. Doing so regardless would expose the new products, and the manufacturers themselves, to a negative opinion among consumers, which would not only impede new product sales but also cross-selling activities and, in the worst case, customer relations in general.

In addition, before launching new financial products, banks conduct extensive market studies which specifically identify their market prospects. Such prospects are inextricably linked with the products’ advantages for the consumer, ensuring that manufacturers will, in their own interest, refrain from offering potentially detrimental products. The conjectural assumption that manufacturers might launch new products purely in the bank’s interest is unfounded, not least owing to the high IT investments that are usually involved in new product launches.

With reference to the above reasoning, we are convinced that the cost of implementing the envisaged regulations would exceed the marginal additional benefits for consumers, in some areas considerably so. The increase in costs for both consumers and manufacturers would be unacceptable under the principles of proportionality and subsidiarity.

¹ MaRisk – German Minimum Requirements for Risk Management: Administrative instructions issued by the German Federal Financial Supervisory Authority in respect of risk management in German credit institutions, representing the transposition of the qualitative requirements arising from Basel II/Basel III that relate to risk control in banks and the respective verification processes by the regulator into German law. In legal terms, they are referred to as ‘administrative instructions for the interpretation of standards’.

Comments: EBA Consultation on “Draft Guidelines on product oversight and governance arrangements for retail banking products” (EBA/CP/2014/37)

Q5: Do you agree with Guideline 2 on manufacturers’ internal control functions?

In principle, and specifically with reference to the legislative principles of proportionality and subsidiarity, we consider it unnecessary to impose the envisaged regulations for the relevant, usually standardised, retail products as compulsory integral components of governance, risk management and the internal control framework. Product development processes are, after all, already integrated into the banks’ internal control systems.

In addition, compliance departments already fulfil the central task of identifying and resolving potential conflicts of interest at an early stage, including those that may arise in the manufacture of new products, making any additional formalised processes superfluous.

It is in the manufacturers’ best interest to fully meet the requirements specified under number 2.4, recruit expert and competent staff and offer regular specific training opportunities. Due to competitive pressure, technical proficiency is a key element in product development. Manufacturers are consistently implementing this approach today, rendering additional regulations in the context of obligatory guidelines unnecessary.

In the case of undesirable developments, the responsible national and European supervisory authorities and consumer protection organisations come on the plan. Furthermore, there are arbitration offices/ombudsman programmes at the European level that maintain records of their activities and publish reports on their work. Consumers can contact these office and programmes free of charge. Ultimately, consumers may also go to ordinary courts to bring civil actions. The courts will order manufacturers to take remedial action where appropriate.

Q6: Do you agree with Guideline 3 on the target market?

As stated in our answer to Q1, the German Banking Industry Committee is of the opinion that the long-standing products which are the subject of this EBA consultation, for instance savings deposits, payment accounts, payment services or payment instruments, do not require further regulation. We are convinced that the cost of implementing and monitoring the envisaged supervisory regime by far exceeds the resulting benefits for the consumers and urgently recommend that a cost-benefit analysis be carried out as part of the consideration of any required measures. We are furthermore of the opinion that existing regulations and national requirements provide adequate protection for consumers.

Retail banking products are generally designed such that almost all consumers of these products, with few minute differences in product design, are potential end-users. The determination of a target market is unnecessary since it would virtually comprise all consumers in the retail market. A compulsory classification of individual products or product groups would place an additional burden on the credit and financial industry without resulting in an adequate increase in benefits for consumers. On the contrary, this would rather lead to greater complexity in the field of product selection.

Ultimately, it is the consumers who should decide whether or not to buy a certain product. The consumers should also have complete freedom regarding the reasons why they decide in favour of a certain product. It is important that consumers receive straightforward information on product features and rights in the context of the selling process which allows them to take informed decisions.

Comments: EBA Consultation on “Draft Guidelines on product oversight and governance arrangements for retail banking products” (EBA/CP/2014/37)

On top of this, the determination of a target market is in the manufacturers’ own interest, making any regulation in the context of guidelines superfluous. Product launches fail if there is no target market or the target market has been incorrectly assessed.

Q7: Do you agree with Guideline 4 on product testing?

Given the low level of complexity of the products in question, we consider “product testing” to be unnecessary. It should be left to the manufacturers’ discretion whether or not to conduct “product testing”. In the case of more complex products, it is in the interest of the manufacturer to test the product in order to confirm sufficient demand and market acceptance and avoid bad investments. A compulsory requirement would cause unnecessary costs and restrict market access, particularly for smaller suppliers. It is important that consumers receive straightforward information on product features and rights in the context of the selling process which allows them to take informed decisions.

Again, we would like to point to existing requirements by the German supervisory authorities (MaRisk AT 8.1²) which cover the process applicable to new product launches and take consideration of the principle of proportionality. More extensive requirements, for instance product testing, are principally not required except for new trading transactions. New product launches in retail banking principally result from perceived changes in customer needs. Hence, in the case of new retail products, both the target group and the customers’ interests are known from the beginning and the product is tailor-made to suit them. Separate target group analysis or product tests involving additional bureaucratic process structures based on the proposed EBA Guidelines are thus unnecessary in these strictly limited cases.

The above shows that the definition of a new product is not as trivial as it might appear at first. We would therefore suggest including the following definition:

“A product is considered a new product, when the supervised entity does not yet have sufficient knowledge and experience in order to appropriately handle the resulting business and all related processes.”

This definition would allow for a better identification of products where there is a need for increased scrutiny such as an approval process and product testing. Likewise, it would acknowledge cases where a ‘new’ product is merely a combination of existing products (see our answer on Q4 as well).

Q8: Do you agree with Guideline 5 on product monitoring?

Standard product monitoring should not be introduced since the associated costs are not justifiable. In the context of their on-going market observation activities, manufacturers adjust their products to changes in market conditions in their own interest.

² MaRisk - German Minimum Requirements for Risk Management: Administrative instructions issued by the German Federal Financial Supervisory Authority in respect of risk management in German credit institutions, representing the transposition of the qualitative requirements arising from Basel II/Basel III that relate to risk control in banks and the respective verification processes by the banking supervisor into German law. In legal terms, they are referred to as ‘administrative instructions for the interpretation of standards’.

Comments: EBA Consultation on “Draft Guidelines on product oversight and governance arrangements for retail banking products” (EBA/CP/2014/37)

In addition, product monitoring is superfluous since it is already common practice for customers and their bank advisors to compare the customer's needs/interests with the suggested product solution. If the two fail to coincide, customers will decide against the suggested product. Whether or not a product is up to date is thus reflected by its sales figures. This makes any additional product monitoring superfluous.

Q9: Do you agree with Guideline 6 on remedial action?

Remedial action should exclusively be considered in cases of demonstrably undesirable developments that affect the entire market, not where potential changes in customer requirements may occur at the individual consumer level. It is self-evident that distributors will be notified of specific problems.

In the case of undesirable developments, the responsible national and European supervisory authorities and consumer protection organisations will come on the plan. Furthermore, there are arbitration offices/ombudsman programmes at the European level that maintain records of their activities and publish reports on their work. Consumers can contact these office and programmes free of charge. Ultimately, consumers may also go to ordinary courts to bring civil actions. The courts will order manufacturers to take remedial action where appropriate.

Q10: Do you agree with Guideline 7 on the selection of distribution channels?

The selection of the distribution channels must remain at the discretion of the manufacturers. The elementary principle that the selected channel must be suitable for distributing the respective product is self-evident. Any respective prior regulation regarding the distribution channel is entirely unnecessary.

If any problems arise in respect of individual distribution channels or the product itself, manufacturers obviously react accordingly.

Q11: Do you agree with Guideline 8 on information for distributors?

Distributors should give appropriate consideration to any information provided by the manufacturer. The information itself should be clear, straightforward and up to date.

Specific questions regarding Guidelines for distributors (Title III)

Q12: Do you agree with Guideline 1 on establishment, proportionality, review and documentation?

In our opinion, the level of complexity of the relevant retail banking products is particularly low, rendering any product oversight and governance arrangements unnecessary at the distributor level. Similar to manufacturers, distributors have a vested interest in selling products that meet the interests and objectives of the consumers. Distributors who do not pursue this objective, will eventually fail in their efforts to distribute banking products on the financial market.

In addition, we believe that additional requirements for distributors and additional control and documentation requirements are unnecessary in the case of credit institutions that are already subject to supervision. If further regulatory measures are being considered in this field, exemptions should be provided in respect of the distribution operations of supervised credit institutions.

Comments: EBA Consultation on “Draft Guidelines on product oversight and governance arrangements for retail banking products” (EBA/CP/2014/37)

Q13: Do you agree with Guideline 2 on the distributor’s internal control functions?

In principle, and specifically with reference to the legislative principles of proportionality and subsidiarity, we consider it unnecessary to impose the envisaged regulations for the relevant, usually standardised, retail banking products as compulsory integral components of governance, risk management and the internal control framework.

Since distributors also have a vested interest in selling consumers advantageous products, formalised regulation is superfluous. Given this background, we believe that the associated costs would exceed the potential benefits.

Q14: Do you agree with Guideline 3 on the knowledge of the target market?

Information provided by manufacturers in regard of target markets should serve as a recommendation only. Ultimately, it is the consumers who should decide whether or not to buy a certain product. The consumers should also have complete freedom regarding the reasons why they decide in favour of certain products.

It is important that consumers receive straightforward information on product features and rights in the context of the selling process which allows them to take informed decisions. Situations will also occur which cannot be documented in advance but which will still lead to the purchase of the product and may arise from the consumer’s personal circumstances. In these cases, consumers should not be prevented from purchasing the product.

Q15: Do you agree with Guideline 4 on information?

It is normal practice that the distributor takes into account the manufacturer’s disclosures and provides the consumer with information on the main characteristics of the product. The distributor’s compliance with the applicable legislation is also self-evident.

Ultimately, it is the consumers who should decide whether or not to buy a certain product. It is important that consumers receive straightforward information on product features and rights in the context of the selling process which allows them to take informed decisions.

Obviously, distributors will notify the manufacturer of any problems regarding the product if they are the first to notice. This does not require any prior regulation in the context of the Guidelines.
