

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

**(EBA/GL/2015/18)**

One of the competences of the European Banking Authority (EBA) is to guarantee a consistent, coherent and common application of EU Law and one of the forms in which the EBA gives effect to this mandate is by means of the issuance of guidelines addressed to financial institutions and competent authorities. Consequently, the EBA issued Guidelines on product oversight and governance arrangements for retail banking products, which further develop internal governance requirements for institutions.

The objective of these Guidelines is to guarantee that institutions implement internal policies containing measures aimed at ensuring that:

- Product design considers the interest and characteristics of the target market;
- Product testing is conducted before a product brought to the market, in order to assess how the product would affect its target market. If the result of the testing show poor results, changes to product design should be introduced;
- Products are only sold to consumers within the target market for which they were designed, except in duly justified cases;
- Products are marketed using distribution channels that are appropriate for the target market and which are capable of identifying the target market and have an appropriate level of experience and knowledge of the product;
- The distributor gives all necessary product information to clients;
- Both the manufacturer and distributor, once the product is brought to the market, monitor the product. In case a problem is identified, they should take an appropriate action, which could include ceasing the marketing of the product.

The EBA is of the view that these measures might reduce the number of mis-selling cases and might improve consumer protection.

The EBA published these guidelines on 22.03.2016. Banco de España's Executive Commission endorsed the guidelines on 06.05.2016.

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## Guidelines

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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>1</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. Pursuant 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, by 23.05.2016. 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 the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>1</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>2</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>2</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>3</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>3</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>4</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>4</sup> See CEBS (2006), *Guidelines on outsourcing*, at <https://www.eba.europa.eu/documents/10180/104404/GL02OutsourcingGuidelines.pdf.pdf>