



# Financial Services User Group (FSUG)

9.2.2015

## FSUG reply to the EBA consultation on "Guidelines on product oversight and governance arrangements for retail banking products"

### About FSUG

The Financial Services User Group (FSUG) is an expert group set up by the European Commission following the core objective "to secure high quality expert input to the Commission's financial services initiatives from representatives of financial services users and from individual financial services experts". The mandate of the group is to:

- advise the Commission in the context of the preparation of legislative acts or other policy initiatives affecting users of financial services, including consumers, retail investors and micro-enterprises;
- provide insight, opinion and advice concerning the practical implementation of such policies;
- proactively seek to identify key financial services issues which affect users of financial services;
- where appropriate, and in agreement with the Commission, liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level, as well as to other consultative groups administered by the Commission, such as the European Consumer Consultative Group, the Payment Systems Market Expert Group, the European Securities Markets Expert Group and the Expert Group on Financial Education.

### General remark

The FSUG welcomes the EBA's consultation and its recognition of the importance of rules on product oversight and governance for how financial markets deliver to consumers. The past years' mis-selling scandals, for example sales of risky foreign currency mortgages to consumers who are resolving their housing problem, of unsuitable payment protection insurance or of poor-value unit linked life insurances have shown that rules on internal arrangements for the design, marketing and life cycle maintenance of products are essential for restoring and maintaining a stable, reliable and inclusive financial system for consumers.

EBA's guidelines are a necessary first step for ensuring that products sold to EU consumers are designed to serve their interests and objectives. Because supervision of product oversight and governance in the field of financial services is still a novelty for supervisors in the majority EU member states and because many national supervisory and enforcement regimes still largely focus on disclosure of product features to the consumer, the EBA's task is to ensure that these guidelines are quickly and effectively transposed by national supervisors.

## **General questions**

Question 1: Do you agree with the proposed approach of capturing the entire product life cycle by covering distributors as well as manufacturers?

It is useful to capture the entire product life cycle and also include marketing and sales process. It is important that all phases of the product life circle in which consumer detriment can appear are covered by these guidelines.

Question 2: Do you agree with the delineation of the two sets of requirements for manufacturers and distributors?

The delineation of the two sets of requirements is helpful as the key elements of the POG process differ between manufacturers and distributors.

Question 3: Are there any additional requirements that you would suggest adding to either of the two sets of requirements? If so, why?

In FSUG's opinion, the EBA should provide more guidance in the frequency and content of internal reviews. Were POG arrangements to be reviewed independently, it is more likely that the review is sufficiently critical and shortcomings are flagged up promptly. For example, the review could be covered by a firm's Audit Committee report, and thus be overseen by its auditors.

Both manufacturers and distributors should make their POG arrangements public to allow for greater scrutiny. Such a level of transparency is more likely to elevate any policies put in place beyond a simple box-ticking exercise.

Furthermore, the national supervisors should regularly assess whether the POG arrangements that are put in place by these guidelines prevent inappropriate products from being developed and sold in practice, and report on the findings to the EBA. National supervisors should regularly publish the findings of their reviews of the POG arrangements.

On the basis of the findings of internal and national reviews, the EBA should 5 years after the implementation of these guidelines assess the effectiveness of these guidelines and the need for further adaptations. Within this review, the EBA needs also to investigate the desirability of introducing a regulatory pre-approval process for certain types of products. This would be particularly relevant for products which have been identified as prone to the need for remedial action following the application of the product oversight procedures.

FSUG strongly proposes EBA to also include banking products targeted at SMEs into the scope of these guidelines. SMEs face very similar problems and constraints to consumers when analysing, acquiring and using bank products.

## **Specific questions regarding Guidelines for manufacturers (Title II)**

Question 4: Do you agree with Guideline 1 on establishment, proportionality, review and documentation?

Question 5: Do you agree with Guideline 2 on manufacturers' internal control functions?

Question 6: Do you agree with Guideline 3 on the target market?

Question 7: Do you agree with Guideline 4 on product testing?

The manufacturer should make sure that also the products existing at the moment of entry of these guidelines into force are included into the product testing.

The FSUG believes it would be helpful to include that manufacturers should in particular consider the design and marketing of simple products that can be readily understood by all consumers.

Question 8: Do you agree with Guideline 5 on product monitoring

The FSUG proposes to the EBA to further specify how the products need to be monitored. In particular, indicators such as consumer complaints, early contract terminations and repayment defaults should be taken into account.

Question 9: Do you agree with Guideline 6 on remedial action?

Where necessary for prevent further consumer detriment from taking place, the manufacturer should direct the distributor to suspend the sales of a product.

The manufacturer should also inform the national supervisor on the remedial actions taken, so that possible risks in the market can be recognized early and appropriate supervisory action is taken.

Question 10: Do you agree with Guideline 7 on the selection of distribution channels?

Standards of consumer protection specified under the Title III of these guidelines on distributors need to be in place also in case the manufacturing and distribution units are within the same company.

Question 11: Do you agree with Guideline 8 on information for distributors?

## **Specific questions regarding Guidelines for distributors (Title III)**

Question 12: Do you agree with Guideline 1 on establishment, proportionality, review and documentation?

Question 13: Do you agree with Guideline 2 on the distributor's internal control functions?

Question 14: Do you agree with Guideline 3 on the knowledge of the target market?

Question 15: Do you agree with Guideline 4 on information?

The distributor should take the information on the product features and the target market into account in its marketing activities and ensure that the marketing does not directly address the target markets for which this product is not suitable or lead to misunderstandings about the key features of the product.

The distributor should ensure that the sales staff are properly trained and ensure that conflicts of interest, in particular through remuneration policies, are avoided during sales.

The distributor should inform the manufacturer in case the product is being sold outside the target market.