

Eurofinas Response to the EIOPA Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive

Eurofinas, the voice of consumer credit providers at European level welcomes the opportunity to respond to the Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive.

Eurofinas supports the work of the European Insurance and Occupational Pensions Authority (EIOPA) in promoting transparency, simplicity and fairness in the market for insurance products and services across Europe.

Who we are and why we are concerned

As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, universal banks, specialised banks and captive finance companies of car or equipment manufacturers.

The products sold by Eurofinas members include all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, furniture, electronic appliances, education etc. It is estimated that together the Eurofinas members financed over 423 billion Euros worth of new loans during 2015 with outstandings reaching 981 billion Euros at the end of the year.

In addition to the provision of consumer loans, companies represented by Eurofinas distribute insurance products on an optional and ancillary basis. Insurance products distributed include, among others, asset protection insurance, loan protection insurance and liability insurance. These insurance products are distributed either directly by consumer credit firms or by partners (retailers, dealers, etc.) that are part of their supply chain.

Eurofinas represents a specific part of the insurance mediation sector that is very different from traditional brokerage. Eurofinas members, as well as their partners, play a crucial role in the distribution of insurance products across Europe. They are in direct contact with both insurance undertakings and policy holders.

Especially product oversight and governance (POG) arrangements are of key importance for the Eurofinas constituency as it may impact product creation and distribution alike. **Since our members only distribute retail insurance products, please note that this response only covers EIOPA's technical advice with regard to POG.**



We contributed to the earlier consultations of the EIOPA on guidelines for (draft) preparatory guidelines on POG. In our response, we highlighted the specificities of insurance distributors. Hence, we welcome EIOPA's new proposals on POG and take this opportunity to reiterate our position on the topic.

Introductory observations

We understand the background of the EIOPA's work on technical advice in the context of the Insurance Distribution Directive and we support the objective to enhance firms' diligence with regard to product design and distribution.

In fact, "product validation" processes are common features within financial organisations including insurance companies. These processes are very similar to the proposed POG arrangements and have often been put in place as a voluntary initiative to improve internal practices. Ultimately, both processes can contribute to improving the internal understanding of product characteristics and contractual conditions for all staff involved in their creation and distribution. However, we do not think that POG arrangements can address the specifics of each transaction and prevent individual conflicts between manufacturers and end users. They should therefore remain a high-level set of standards.

The Insurance Distribution Directive was developed to encompass a wide range of insurance products, including investment-based insurance products. **We see an important role for the EIOPA to ensure that rules that were designed for investment-based insurance shall be applied only to these type of products.**

Specific observations

Relevance of concepts

We think that many concepts used in the EIOPA's proposals are especially of relevance to investment type products. They do not match the characteristics of mass market products of fairly basic technical nature. For example, the identification of a target market makes sense when establishing an investor profile but is of little use when the product is designed to serve, by definition, a large market.

Also, the concept of "consumer interest" is very subjective and difficult to implement in practice. Although we agree that products should be created and distributed to respond to end users' interest, this concept cannot be used as a standard to assess providers' behavior. For example, if this concept may be implemented in the context of an advisory and personalised transaction, it would not be realistic to transpose it in other distribution models.

Responsibility

We strongly believe that individual responsibility should be at the heart of supervisors' policy. This is valid for firms and consumers alike.

Ultimately, the responsibility of contracting an insurance policy lies with the consumer. Consumers are free to select the insurance product offered to them. This obviously requires from consumers to compare different offers and "shop around". The industry should not endorse the responsibility of restricted market search activity by consumers.

We also think it is important to make a distinction between the responsibility of manufacturers and distributors. In this respect, we agree with the EIOPA that new rules on POG should not extend and transfer to distributors the responsibilities of manufacturers' vis-à-vis their products. The main responsibility for product oversight and governance of insurance products remains with manufacturers, as is the case in the banking field.



Proportionality

We very much agree with the EIOPA that product oversight and governance arrangements must be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity.

We believe that mis-selling is primarily the result of corporate decisions taken by individual firms – which may not be shared by other market participants and can be corrected by enhanced enforcement and supervision. We feel that adding on a layer of standards may in fact be counter-productive unless sufficient flexibility is guaranteed to adjust to various business models and products.

Sufficient flexibility should also be allowed to adapt to the number and diversity of industry operators, market characteristics and products. Against this background, we think EU legislation, such as the Insurance Distribution Directive (IDD), should be used as a reference standard against which compliance can be assessed. We fear that without the introduction of such standard, there will not be any uniformity in the application of these guidelines.

Answers to the consultation questions

Q5: Do you agree with the proposed high-level principle in order to assess whether activities of an insurance intermediary should be considered as manufacturing?

We share the EIOPA's view that product oversight and governance arrangements must be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity. We therefore strongly agree with the EIOPA that not all kinds of involvement or influence of an insurance intermediary in the design and manufacturing of an insurance product, should be considered as manufacturing.

Eurofinas believes that the scope of the activities as identified by the EIOPA as an exercise of substantial involvement in the manufacturing process of insurance products, is too wide. Larger insurance intermediaries are by definition involved in defining the features of the product, since they are the ones that are in contact with the customers. However, this should not *per se* qualify them as the product manufacturer any more than any other third party that helps the insurance company to identify customer requirements.

For example, the mere act of an insurance intermediary to enquire about the possibility to provide coverage that does not yet exist in that market - in response to a customer's request for it - cannot be seen as "incisive".

As noted by the EIOPA, it should be assumed that an intermediary can be considered a manufacturer *only* when it plays a *key* role in the design and development of insurance products.

It is rarely the case, however, that the insurance intermediary plays such key role. In general, the manufacturer has the final authority to decide on product details, timing of market launches and definitions of target markets. The manufacturer also carries full responsibility for these decisions towards customers as well as supervisory authorities. In addition, the insurance undertaking is subject to comprehensive supervision which involves the disclosure of internal product approval processes as well as risk management processes. Another relevant factor to take into account in distinguishing the status of a manufacturer from that of the distributor, is the fact that that distributor is subject to the manufacturer's instructions with regard to what products should be sold to which target market and under which conditions. We strongly believe that a further extension of the distributor's responsibilities and obligations would be redundant, costly and would not lead to any tangible benefit for the customers.



Against this backdrop, we draw EIOPA's attention to the need for consistency between the draft technical advice and its explanatory note, particularly paragraphs 8 – 15. For the sake of legal certainty, we would like to ask the EIOPA to incorporate paragraph 11 of the explanatory note into the draft technical advice.

Q6: Do you consider that there is sufficient clarity regarding the collaboration between insurance undertakings and insurance intermediaries which are involved in the manufacturing of insurance products? If not, please provide details of how the collaboration should be established.

Eurofinas agrees with the EIOPA that it is very important that sufficient clarity is given regarding the collaboration between insurance undertakings and insurance intermediaries which are involved in the manufacturing of insurance products. For us, it is currently not clear whether the envisaged collaboration agreements between the two co-manufacturers can include a delegation of liability. It is important to avoid shifts of responsibility as a result of unbalanced economic powers during negotiations of the collaboration agreement.

In addition, firms are sometimes both manufacturer and distributor of (the same) retail insurance products. We ask the EIOPA to provide further explanations how POG rules are to be applied in those cases. When an intermediary is considered a manufacturing intermediary, does this mean that the POG distribution requirements are no longer applicable?

Eurofinas would also be grateful if the EIOPA could clarify whether it envisages the assessment of "manufacturing activities" to be conducted per product and if this is the case, how this should work then for firms that are involved – to different extents – in the distribution or manufacturing of multiple insurance products.

Q7: Do you agree with the proposed high-level principle for the granularity of the target market? If not, please provide details on the level of detail you would prefer

We share the EIOPA's view that the target market for insurance products must continue to be appropriately defined by manufacturers. However, we do not think that all proposed criteria to determine the target market are in fact relevant factors. It is important not to confuse the definition of target market with a potential miss-sell practice. For example, at the level of target market, it is not yet relevant – or feasible - to specify the required knowledge and financial capability of individual customers. The new standards should not compromise execution-only/non-advice sales which are very common in the retail financial services sector.

Q8: Do you agree with the proposed review obligations for manufacturers and distributors of insurance products? Would you consider it important to introduce a minimum frequency of reviews which should be undertaken by the product manufacturer e.g. every 3 years?

We agree with the EIOPA that manufacturers and distributors must take appropriate action when they become aware of an event that could materially affect the potential guarantees to the identified target market. We stress that the focus here must be on the target market – any micro-management on customer level would be inappropriate (and unfeasible).

In accordance with the outcome of the EIOPA's impact assessment, we believe that it must be left to manufacturers to determine the frequency of review, allowing him to take into consideration the product specificities. This will motivate insurance manufacturers to develop resilient products that are not easily impacted by external events. It would also allow each manufacturer to adapt the correct frequency of the process in line with the timing of the internal design product, also taking into account the size, scale and complexity of the insurance undertaking and of the different products it manufactures.



Against this background, we also draw the EIOPA's attention to the fact that product and distribution reviews are commonly conducted as part of business operational reviews, often on ongoing basis. Flexibility should therefore be provided to business operators in the course of their engagement with national supervisors. Rather than defining a specific frequency of review, this should be determined on a case-by-case basis, taking consideration of the products and business models involved.

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