

## **Eurofinas Response to the European Banking Authority's Draft Guidelines on Product Oversight and Governance arrangements (POG) for retail banking products**

Eurofinas, the voice of consumer credit providers at European level welcomes the opportunity to respond to the Consultation Paper on the proposal for Guidelines on Product Oversight and Governance (POG) arrangements for retail banking products.

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 321.7 billion Euros worth of new loans during 2013 with outstandings reaching 827.9 billion Euros at the end of the year.

We appreciate that the European Banking Authority (EBA) is understandably looking for technical observations on the various guidelines. However, we wish to draw the attention of the Authority to a number of general concerns of key importance for the industry that Eurofinas represents.

### **General observations**

Eurofinas supports the work of the EBA in promoting transparency, simplicity and fairness in the market for retail banking products and services across Europe. We believe however that **potential issues linked to product design and distribution practices are primarily the results 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.

“Product validation” processes are common features within credit and financial organisations. These processes are very similar to the proposed POG arrangements. They have often been put in place as a voluntary initiative to improve internal practices but, as acknowledged by the EBA, can also be required by prudential standards. Ultimately, these processes can contribute to improving the internal understanding of product characteristics and contractual conditions for all staff involved in their creation and distribution. **POG arrangements cannot however 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.

### **Scope of the initiative**

We are strongly concerned by the scope of the guidelines which seem to build upon both European prudential standards and retail legislation.

Consumer credit providers/asset financiers across the European Union (EU)/European Economic Area (EEA) encompass a diversity of organisations of different legal nature (i.e. specialised banks, finance houses) and with various operational characteristics (independent companies, subsidiaries of banks, captive finance companies of manufacturers). Depending on their activities, market location and structure, local prudential regulatory treatment of specialised financing firms may vary. **We think that subjecting the application of guidelines aimed at enhancing firms' diligence with regard to product design and distribution to the CRD IV package will fragment the EU supervisory framework for credit firms.**

These standards will not only apply to specialised consumer credit firms subject to EU prudential rules but they are also very likely to apply to specialised consumer credit firms either as a result of national supervisory structures (i.e. it is very unlikely that supervisors actually make a distinction between operators for consumer protection related objectives) or characteristics of national regulatory frameworks (we recall here that in many EU markets there is no civil law distinction between consumer loans for the acquisition of residential property or consumption purposes).

**We see this as a major issue as we think the guidelines do not always match the business models of specialised consumer credit firms and were simply not designed for our members.** A very simple evidence of that is the absence of reference to the EU Consumer Credit Directive (CCD) in the consultation paper.

The CCD was adopted on 23 April 2008 after more than six years of intense discussions amongst all interested parties<sup>1</sup>. This European legislation covers all aspects of the consumer credit lending transaction. We see this legislation as a gold standard for consumer credit transactions across Europe and believe that its consistent implementation is critical for both consumers and lending institutions.

### **Good Faith and Responsibility**

As previously mentioned by our Federation, any supervisory policy should be based on the principle of "good faith" as opposed to "bad faith". The objective should be to reconcile the demand and supply sides and at the same time build consumer confidence.

We also strongly believe that individual responsibility should be at the heart of supervisors' policy. We think this very much missing from the proposed guidelines and is valid for firms but also for consumers. Ultimately, the responsibility of contracting a financial agreement lies with the consumer. Consumers are free to choose whichever product they wish. 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, misconduct or lack of financial education.

### **Proportionality**

We think that consistency should be ensured between the work of the EBA and "level 1" regulation as well as the proportionality of standards with regard to product complexity. Importantly, it is also crucial to safeguard that rules remain adequate to the various risks involved. Against this background, we believe the work of the EBA should necessarily take into account the work conducted by the European Securities and Markets Authority (ESMA) to avoid a situation where retail banking products are subject to more stringent standards than investment services. In our opinion, it is essential to differentiate between standardized low risk simple products (such as consumer loans) and other, more complex, banking products.

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<sup>1</sup> See Directive 2008/48/EC on Consumer Credit Agreements, OJEU L 133/66 of 22 May 2008

## Guidelines for Manufacturers

The following observations are limited to the guidelines/points where we see the most important impact for consumer credit operators.

### Guideline 3: Target Market

(3.1) We think that many concepts used in the guidelines are especially of relevance to investment type products. However 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, in general, of little use when the product is designed to serve, by definition, a large market. The compatibility of these standards with non-discrimination requirements should also be clarified.

(3.2) The concept of “consumer interest” is very subjective and difficult to implement in practice. Though we agree that products should be created and distributed to respond to end users’ interest, this concept cannot be used as a standard or 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. Also, we fear that consumers may make abusive claims in the case of increase of interest rates or default. We see an increasing risk of litigation in this respect.

(3.4) The suggestion that manufacturers should be prevented from developing or proposing too many product variants is unacceptable. We think this completely contradicts the objective of a modern and responsible supervisory framework. A reasonable consumer is able to compare different products and variety of products gives him the possibility to find a product that fits his needs best. Against this background, we think unnecessary complexity should be avoided and transparency fully supported.

(3.5) We think a general requirement to identify an unsuitable target market is a very conservative approach which, in our view, will considerably restrict manufacturers’ ability to adjust to diverse consumer profiles. We believe this will restrict consumers’ access to finance.

(3.6) We think that consumers’ understanding of terms and conditions is essential and, in particular, the understanding of the basic characteristics and charges of a product. We recall here that lenders are required by EU law to provide information and explanation to the applicant borrower before being bound by a credit agreement. Against this background, our Federation strongly supports initiatives undertaken by manufacturers and distributors alike to adjust their material and communication to improve consumers’ comprehension.

However, we do not believe that the introduction of a requirement to assess consumers’ financial capability is either possible or desirable. We also think this would not be consistent with the outcome of political negotiations for both the Mortgage Credit Directive and the Consumer Credit Directive where standards for advice or suitability assessment were explicitly left out.

### Guideline 7: Selection of distribution channels

Sufficient flexibility should be allowed to adapt to the number and diversity of industry operators, market characteristics and products. We also believe it is essential to factor in the various industry codes of conduct / protocols for the development and distribution of products. We think manufacturers should be able to reference such standards in their respective POG arrangements.

(7.3) We think the guideline should distinguish between internal staff or intermediaries acting on behalf of a manufacturer on one hand and independent distributors acting on behalf of the consumer on the other. Manufacturers cannot be responsible for compliance with distribution standards of independent brokers.

From a practical perspective, distribution channels are usually not a problem *per se*. However, problems may arise with a specific staff or intermediary. In such case, the manufacturer should be able and encouraged to take appropriate action, possibly by revoking partnership.

#### **Guideline 8: Information for distributors**

(8.1) We think that, for consumer credit agreements, the recommendation is redundant as this is already current practice. Additionally, it is worth stressing that EU law requires consumer credit firms to provide applicant borrowers with pre-contractual information via the Standard European Consumer Credit Information Sheet (SECCI). The latter includes all costs to be borne by the consumer and must be provided by all staff and intermediaries.

This implies that manufacturers necessarily need to ensure that standard, clear, precise and up-to-date information is available across the board.

(8.3) We think that, here again, a distinction should be made between internal staff or intermediaries acting on behalf of a manufacturer on one hand and independent distributors acting on behalf of the consumer on the other.. It is important to recognise that many distributors do not have an advisory function (execution only functions/transactions) and are tied to the distribution of products according to specific conditions, selection criteria and even precise scripts imposed by manufacturers. Many distributors have no possibility to influence directly the granting of a product or its terms.

#### **Guidelines for Distributors**

#### **Guidelines 1 to 4**

We wish to reiterate that a clear distinction should be made between internal staff or intermediaries acting on behalf of a manufacturer on one hand and independent distributors acting on behalf of the consumer on the other. In the first case, it would not make sense to ask these distributors to develop their own arrangements. Their work standards would necessarily be integrated into the manufacturer's POG arrangements.

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