

## **Eurofinas Response to the EIOPA Preparatory Guidelines on Product Oversight and Governance arrangements by insurance undertakings and insurance distributors**

### **Introductory observations**

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 by insurance undertakings.

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 almost 356 billion euro worth of new loans during 2014 with outstandings reaching 861 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.

**Product oversight and governance arrangements are of key importance for the Eurofinas constituency as it may impact product creation and distribution alike.** We understand the background of the EIOPA initiative and we support the objective to enhance firms' diligence with regard to product design and distribution.

We contributed to the consultation on draft guidelines for Draft Guidelines on Product Oversight and Governance Arrangements by Insurance Undertakings. In our response, we highlighted the



specificities of insurance distributors. Hence, we welcome EIOPA's preparatory guidelines on product oversight and governance for insurance distributors and take this opportunity to reiterate our position on the topic.

## **Specific observations**

### **Relevance of concepts**

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 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.

## **Answers to the consultation questions**

### **Q1: What benefits/positive impacts do you expect from the introduction of the preparatory guidelines on product oversight and governance arrangements for distributors?**

We understand the background of the EIOPA initiative and we support the objective to enhance firms' diligence with regard to product 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.

In this respect, we also very much agree with EIOPA's views on proportionality. We agree that the authorities should also take into account whether the distribution activity is the principal professional activity or an ancillary activity, whether the distributor is acting as tied agent or independent broker. As established by EIOPA, some firms, in particular small firms, may not have the same formal governance process as larger distributors.

It is therefore important that product oversight and governance arrangements are 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.



**Q2: Do you foresee any other costs/negative impacts from the proposed policy options which we should take into consideration?**

As explained above, we believe that POG arrangements can have a positive impact on the distribution processes of the insurance products, in order to ensure that the objectives, interests and characteristics of the target market are duly taken into account. 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.

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.

**Q3: Do you agree that the preparatory guidelines on product distribution arrangements for distributors should be distinct from those applicable to manufacturers and should focus on the necessary measures distributors should take in preparation of the distribution of insurance products?**

We strongly agree with the EIOPA that the guidelines should not extend and transfer to distributors the responsibilities of manufacturers' vis-à-vis their products. The guidelines should establish a distinct set of duties that distributors should comply with when selecting products for distribution.

It is important that the main responsibility for product oversight and governance of insurance products remains with manufacturers, as is the case in the banking field.<sup>1</sup>

**Guideline 3: role of the management**

The persons within the distributor's management responsible for the distribution should endorse and be ultimately responsible for the establishment, implementation, subsequent reviews and continued internal compliance with the product distribution arrangements.

**Q4: Do you have any comments on Guideline 3?**

We agree that the distributor's management responsible for the distribution should endorse and be responsible for the establishment, implementation, subsequent reviews and continued internal compliance with the product distribution arrangements.

However, we would like the EIOPA to clarify what is meant with the "distributors' management". The term should be consistent with the standards for manufacturers i.e. responsibility should be with the "manufacturer's administrative, management or supervisory body".

In addition, it is worth recalling that external business partners act under the responsibility of the distributor's management. This must also be recognised.

<sup>1</sup> To this extent, see the EBA Guidelines on Product Oversight and Governance for retail banking products and services <https://www.eba.europa.eu/documents/10180/1141044/EBA-GL-2015-18+Guidelines+on+product+oversight+and+governance.pdf/d84c9682-4f0b-493a-af45-acbb79c75bfa>

**Guideline 5: Obtaining all other necessary information on the product from the manufacturer**

The product distribution arrangements should aim to ensure that the distributor obtains all other necessary information on the product [other than on the target market] from the manufacturer in order to fulfill its regulatory obligations towards the customers. This includes information on the main characteristics of the products, its risks and costs as well as circumstances which may cause a conflict of interests at the detriment of the customer.

**Q5: Are there any further measures which would be appropriate to enhance the flow of information from the manufacturer to the distributors?**

For Eurofinas member firms, the collection of necessary information from the manufacturer – such as the characteristics of the product, its risks and costs - is a pre-condition for the distribution of insurance products. Without such information, it is simply not possible to distribute retail insurance products.

In this respect, we emphasise that it is the manufacturer that is the party with the complete overview of the above information (flow). The manufacturer identifies the target market, is in charge of monitoring and product testing. It is therefore only natural that responsibility for the accuracy and completeness of the information must remain with the manufacturers of the insurance products, as is the case in the banking field with the development of pre-contractual standardized information<sup>2</sup>.

**Guideline 6: Distribution strategy**

Where the distributor sets up or follows a distribution strategy it should not contrast with the distribution strategy and the target market identified by the manufacturer of the insurance product.

**Guideline 7: Regular review of product distribution arrangements**

The distributor shall regularly review the product distribution arrangements to ensure that they are still valid and up to date and should mend them where appropriate, in particular the distribution strategy, if any.

**Q6 and 7: Are there any further elements to be considered with regard to the distribution strategy? : Do you have any comments on Guideline 7?**

We agree that, in principle, distribution strategies of insurance distributors and manufacturers should be harmonised.

In order to comply with guideline 7, distributors will have to amend their distribution arrangements from time to time, to ensure that they are valid and up to date. Yet, Guideline 6 provides that insurance distributors' distribution strategies must always be in line with those of their manufacturer. A problem may thus arise when a distributor takes necessary action in accordance with guideline 7 (e.g. with regard to standards in relation to distribution modalities, prevention of anti-money laundering, data privacy requirements), if this would result in a conflict with the distribution strategy of his manufacturer.

In order to avoid such problem, manufacturers must make sure to align their distribution strategy with that of the distributor when this is required by Guideline 7. The main responsibility for this should lie with the manufacturer of the insurance products.

**Guideline 8: Provision of sale information to the manufacturer**

The distributor should inform the manufacturer without undue delay when he becomes aware that the product is not aligned with the interest, objectives and characteristics of the target market or if he becomes aware of other product related circumstances increasing the risk of consumer detriment.

<sup>2</sup> For example, the Standardised European Consumer Credit Information (SECCI) sheet and the European Standardised Information Sheet (ESIS) for mortgage loans .



**Q8: Are there any other appropriate measures to enhance the flow of information supporting manufacturers to monitor their products pursuant to Guideline 8 of Chapter I?**

In this context, we emphasise the general interdependence between the manufacturers and distributors. Their business relationship requires good communication. Nevertheless, this should not lead to a transfer of responsibility from the manufacturer to the distributor on monitoring or information flows.

**Guideline 9: Documentation**

All relevant actions taken by the distributor in relation to the product distribution arrangements should be duly documented, kept for audit purposes and made available to the competent authorities on request.

**Q9: Do you have any comments on guideline 9?**

We do not have any further comments on guideline 9.

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