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Panel response to the EIOPA consultation on guidelines for product oversight and governance arrangements (POG) by insurers

General comment

The Panel welcomes this initiative by EIOPA to bring a more coherent approach to the issue of product oversight and governance in the insurance sector. We are broadly happy with the guidelines as proposed, but believe they could be strengthened in places.

As a practical aside, we would ask EIOPA to refrain from using consultation papers that ask for comment on entire pages within a document, rather than using individual questions or inviting comment on specific sections.

Page 6: Proportionality

As a horizontal remark, it is understandable that product oversight and governance arrangements should be commensurate to complexity of the business that implements them. However, the key concern should be the outcome, i.e. whether the arrangements that are put in place prevent inappropriate products from being developed and sold. We believe the effectiveness of POG arrangements should be judged by their impact in reducing miss-selling.

As regards the administrative costs, we would note that in the end these are borne by consumers in any case as firms pass them on to their clients. Accordingly, a stringent product oversight system that enables the right products to be sold to the right consumers prevents costly miss-selling further down the line.

Page 6: Applicability to distributors

The Panel acknowledges the legal limitations on EIOPA that have led it to exclude distributors from the scope of the current guidelines.

However, given the direction in which the negotiations on the recast Insurance Mediation Directive are progressing, we feel it would be useful to set out some preliminary remarks on any future revision of the guidelines into a delegated act that also covers distributors. Any information which informs the manufacturer about actual experience with the product should help it to tailor existing and future products more effectively to the consumer.

More specifically, it would be beneficial to all parties were the distributor to inform the manufacturer's Home State regulator should they become aware of any event that could materially affect the potential risk to the identified target market.

If it appears that the product is being sold outside the original target market, distributors should make this information available to the manufacturer and both should consider whether sales of the product should be suspended, or whether it may have been mis-sold. They should also be required to inform the Home State regulator.

The guidelines should also be explicitly extended to staff involved in the sale of the product, as this is arguably where the greatest risk of miss-selling occurs. EIOPA could envisage a provision that staff should be properly trained and not be incentivised to act against the customer's best interest.

Page 8: Establishment and review of POG arrangements

The Panel would ask EIOPA to consider whether companies should be urged by means of these guidelines to 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.

We are also concerned that EIOPA appears content for the periodic review as currently foreseen to be conducted entirely internally within each firm. 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.

Page 8: Conflicts of interest

The Panel strongly believes that the emphasis should be on the avoidance and elimination of conflicts, rather than their 'management' as suggested in the current version of Guideline 1. Conflicts of interest are a crucial factor in many instances of miss-selling, and manufacturers should be called on to eliminate them wherever possible.

We note that the EBA's draft guidelines on product oversight and governance state that "arrangements should be designed to (...) avoid potential conflicts of interest", and would urge EIOPA to adopt this wording.

Page 9: Target market

The guidelines do not refer to simple products, even though adequate product oversight and governance arrangements are a key component in ensuring that products and their risks can be readily understood by consumers.

We would like to reiterate the findings of the 2013 Sergeant Review in the UK¹, which found that many consumers need simple financial products because of "the challenge of making good choices in what seems to many to be an overwhelmingly complicated marketplace with a very wide range of products which are complex and difficult to understand".

The review also established a set of principles, which form the basis of an objective test to establish whether a product is simple or not. These include for example the use of standardised language, a transparent fee structure and straightforward and clear purchasing process.

We would encourage EIOPA, in cooperation with the other ESAs, to conduct a similar exercise at EU-level to establish such operating principles for manufacturers. To ensure adequate consumer understanding of the types of products they are offered, it is also critical that a designation of a product as 'simple' is subject to oversight by a regulator or another independent body.

Although these guidelines are non-binding, we believe 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.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191721/sergeant_review_simple_products_final_report.pdf

Page 10: Remedial action

We would ask EIOPA to include a clear reference in guideline 9 to the possibility of suspending from sale a product where monitoring has found problems with the design or sale of a specific product. The Panel also believes that any remedial action should be promptly reported to the competent authorities of the home Member State, so that the authorities can spot emerging problems and risks more rapidly.

Although we accept that this is outside of the scope of this consultation paper, the Panel would like to underline to EIOPA and other EU institutions the need to investigate the desirability of introducing, in the long-run, a regulatory pre-approval process for certain 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.

Page 11: Distribution channels

In the paragraph following sub-paragraph c, the word 'reasonable' should be replaced with 'necessary'. Whilst it is understandable that product oversight and governance arrangements should be commensurate to complexity of the business that implements them, the key concern should be the outcome, i.e. whether the arrangements that are put in place in practice prevent inappropriate products from being developed and sold.

We would also ask EIOPA to include a clear reference to the possibility of withdrawing a product from a particular distribution channel where product monitoring has found that the channel in question does not meet the manufacturer's POG arrangements.

Page 11: Outsourcing of the product design

It should be clear from the guidelines that a manufacturer should not outsource its product design where this will lead, or is likely to lead, to consumer detriment.

As a result, we believe the phrase 'lead to undermining continuous and satisfactory service to the target market' in guideline 11 is unnecessarily ambiguous. It should be replaced with 'lead to, or be likely to lead to, consumer detriment'.

Page 31: Definition of consumer

The Panel strongly supports an approach which enables national competent authorities to include smaller- and medium-sized businesses (SMEs) within their definition of a 'consumer' for the purposes of applying these guidelines. Given that many SMEs are effectively retail consumers, we do not believe that there would be any significant additional administrative costs associated with this approach.

Page 32: Use of quantitative and qualitative scenario analysis

We believe both quantitative and qualitative scenario analysis is required for firms to understand the risks associated with their products (both life and non-life insurance), which is a key element of creating a sound product and of the determination of a suitable target market.