EBA/CP/2014/37 Draft guidelines on product oversight and governance arrangements for retail banking products

by

to the

Introduction

1. The CML is the representative trade body for the residential mortgage lender industry that includes banks, building societies and specialist lenders. Our 125 members currently hold around 95% of the assets of the UK mortgage market. In addition to lending for home-ownership, the CML members also lend to support the social housing and private rental markets.
2. We welcome the opportunity to respond to the European Banking Authority’s (EBA) consultation on draft guidelines on product oversight and governance, EBA/CP/2014/37 [*Draft guidelines on product oversight and governance arrangements for retail banking products*](https://www.eba.europa.eu/-/eba-consults-on-guidelines-on-product-oversight-and-governance-arrangements-for-retail-banking-products).
3. We have some general comments as well as specific comments on the guidelines and the implementation timetable. Our response only relates to a handful of aspects of the EBA’s consultation so we have chosen to give our comments under these headings.
4. We are happy for the EBA to make our response publicly available.

**General comments**

1. We question the need for these EBA guidelines. Existing European legislation already provides for consumer protection. For mortgages specifically, the Mortgage Credit Directive (MCD) includes provisions on sales processes and requirements for firms’ staff. Member states also already have regulatory regimes.
2. We would welcome a more detailed explanation from the EBA about its approach to creating these guidelines. The scope of the guidelines spans the range of financial services and the breadth of Europe. We are concerned the UK mortgage market, which already ensures good outcomes for customers, faces further regulation due to issues regarding other products in other European countries.
3. We are also concerned the EBA may be seeking to deliver the policy objectives of other organisations and legislation. The EBA’s rationale for these guidelines includes reference to mortgages sold alongside other products and to risks arising from foreign currency loans. The MCD includes rules on tying and bundling and on foreign currency lending. We question why the EBA believes it needs to further regulate in this area.
4. We consider the EBA should at least allow the existing regulations to take effect before introducing further regulations. Not doing so will add further complexity and it will not allow the EBA and other European authorities to see what, if any, gaps emerge after the implementation of legislation that has already been passed, such as the MCD.
5. We believe the EBA should ensure that any guidelines it chooses to publish are at a sufficiently high level to allow member states to implement them in the way most appropriate to their legal systems and their markets.

**Specific comments on requirements for manufacturers**

1. In addition to our earlier comment that we are not persuaded of the need for these guidelines for mortgages, we have some comments on the guidelines themselves.

*Establishment, proportionality, review and documentation*

1. We believe there is already sufficient and adequate regulation on firm governance.

*Manufacturer’s internal control functions*

1. Firms already have internal control functions that ensure there are committees drawing on the expertise of relevant departments.
2. We note the MCD’s knowledge and competence requirements and the need for adequate explanations. These include a specific requirement for relevant staff to have product knowledge. There is no need for further guidelines to train staff to make sure they understand the product features and characteristics. We note that advisers will need to give adequate explanations of products, which we expect they would be unable to do without having the requisite knowledge.

*Target markets*

1. We do not believe the EBA needs to require firms to introduce mortgage products that meet the interests, needs and characteristics of a target market. MCD article seven already requires firms to take into account the rights and interests of consumers. We also note firms are unlikely to introduce products that do not meet consumers’ needs. Doing otherwise would mean introducing products that are less appealing to customers.
2. We do not believe these guidelines should require firms to specify a methodology for identifying the target market for a product. Firms are already doing this in a way appropriate to their businesses and we reiterate that a firm that did not understand the needs and demands of consumers would be unlikely to be successful.
3. The need to identify the customers who will be excluded from the target market also reduces consumer sovereignty. We note this appears at odds with the MCD emphasis on the need for consumers to make their own decisions. It may also disproportionately affect the range of products available to some groups of consumers.
4. Requiring mortgage lenders to assess the appropriateness of the product for the target market also does not seem fully compatible with the MCD. This provides for firms to ensure customers have enough information to make an informed decision.
5. We also note the need to identify target markets in this way could slow the speed with which firms are able to bring products to market. We reiterate that successful firms are already able to identify groups of consumers for whom a particular product is appealing.
6. We are not persuaded of the need for firms to identify the financial literacy of the target market. Individual assessments of an individual’s ability to afford a mortgage and the requirement for firms to explain the mortgage to the individual customer, as the MCD requires, is a much more meaningful exercise and one that is much more likely to ensure a good customer outcome.

*Product testing*

1. We reiterate that firms are unlikely to introduce products that are not appealing to customers and that many firms will test their products using a range of measures, including market research. Having to test products so prescriptively therefore seems unnecessary and will delay the time it takes to get a product to market.

*Product monitoring*

1. We question the need for a guideline to monitor products. Firms keep their products under constant review, removing from the market those that are unappealing to customers or no longer competitive. A firm that did not do this would be unlikely to be able to compete with its peers.
2. Given our earlier comments on target markets, we do not believe firms should monitor a product according to the needs, interests and characteristics of a target market. This suggests the product may not at some future point become appealing to other markets.

*Remedial action*

1. There are already a range of reasons for firms to take action where they identify problems with products. One major reason is reputational damage, which provides a substantial incentive to both monitor and rectify issues. Regulatory intervention and the threat of regulatory intervention are further incentives for firms to act to rectify problems.
2. We add that the national regulator would intervene if there were an issue that a firm had allowed to crystallise.

*Distribution channels*

1. Firms should be allowed to choose the appropriate distribution channel for their products both when they launch a product and while that product is available.
2. We note there is an option in these guidelines for firms to sell their products outside the target market, albeit on an exceptional basis, and yet earlier guidelines require firms identify who is and who is not a target for the product. Doing so is likely to be complex and we are not sure this will ensure good outcomes for customers. Firms should have discretion over who they sell their products to, subject to existing regulations, such as the need for a creditworthiness assessment.

**Specific comments on requirements for distributors**

1. Our comments above on Establishment, proportionality, review and documentation and Manufacturer’s internal control functions and Target markets also apply here.

*Information*

1. We do not consider there is a need for separate information requirements where distributors are part of the same firm. We would have welcomed the EBA’s making clear that these requirements do not apply here.

**Cost-benefit analysis**

1. We would have welcome the EBA considering the effect of further regulation of financial services, and the mortgage industry in particular given any change appears to be required alongside MCD implementation, on foregone innovation. We consider the aggregate effect of regulation will constrain firms’ ability to respond to the needs of customers.

Implementation

1. We are concerned about the proposed implementation period for these guidelines. Even if the EBA manages to publish its final guidelines in April 2015, this will only give member states 12 months to consult on and implement their new rules. This is unlikely to be sufficient given the range of financial services that will be affected. We add that in the UK the FCA will also consider how these guidelines fit with its already substantial regulatory regime.
2. The currently envisaged timetable also coincides with the implementation of the MCD. In the particular case of mortgage lenders, work to comply with any new rules will have to be done alongside MCD implementation, among other regulatory initiatives. This will be very challenging for firms and it may limit their ability to introduce innovations to the market during this period.
3. We recommend the EBA reviews the timetable for implementation and considers giving member states more time to make the changes to their rules. Member states should have at least an extra 12 months to make these changes.

**Contact**

1. This response has been prepared with our members. Please contact Andrew MacLachlan ([andrew.maclachlan@cml.org.uk](mailto:andrew.maclachlan@cml.org.uk)) with comments or questions.