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10 February 2015

## EBF RESPONSE TO EUROPEAN BANKING AUTHORITY'S CONSULTATION PAPER ON DRAFT GUIDELINES ON PRODUCT OVERSIGHT AND GOVERNANCE ARRANGEMENTS FOR RETAIL BANKING PRODUCTS (EBA/CP/2014/37)

### GENERAL COMMENTS

The European Banking Federation (EBF) welcomes the opportunity to respond to the [European Banking Authority \(EBA\)'s consultation paper on draft guidelines on product oversight and governance arrangements for retail banking products](#) published on 10 November 2014.

- The Guidelines aim at strengthening market confidence which is an objective that EBF considers to be a priority. At the same time the EBF would like to highlight that this objective has to be well balanced with the need to preserve financial stability; the right balance between these two needs (which are both for consumers benefit) it is of paramount importance for the EBF and it is the only way to allow Banks and Financial institutions to contribute as far as possible to the economic growth and to financial inclusion.
- Indeed, the EBF members are convinced that it is vital to strengthen and increase consumers trust in the retail financial market and to ensure that consumers have access to financial services products they need.
- Particular consideration should be given to preserve innovation and consumers' access to financial services products within the Internal Market.

To meet those objectives the EBF considers it be of paramount importance to underline the following key challenges which could result from the draft EBA guidelines:

- The EBF would like to emphasise that **a number of sources of EU legislation (recently adopted, reviewed or implemented) currently provide notably standards for the design and the distribution of retail banking products as well as extensive requirements relating to the conduct of business:** such as Markets in Financial Instruments Directive II<sup>1</sup> (MIFID 2), the

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<sup>1</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance, 12.6.2014, OJEU L 173/349-496.

Payment Accounts Directive<sup>2</sup> (PAD), the Payment Services Directive<sup>3</sup> (PSD), the Proposal for a Regulation on interchange fees for card-based payment transactions<sup>4</sup> (agreement reached in December 2014), Consumer Credit Directive<sup>5</sup> (CCD), Mortgage Credit Directive<sup>6</sup> (MCD) and several European Supervisory Authorities' regulations and guidelines (internal governance, remuneration, operational risk etc.). Against this background, we do not necessarily see the added-value to introduce further standards for all retail products especially when no need has been identified in the different directives to take into consideration the complexity of the products. Importantly, we think that consistency should be ensured between the work of the Authority and "level 1" regulation as well as the proportionality of standards with regard to product complexity and risks.

- **The EBF considers that "the stretching" of the investment product regulation to all retail banking products is not appropriate** (e.g the concept of "target market" designed for investment products will not be appropriate for the typology of basic products and the wording "if it is applicable" should be included ).
- **The obligation for the manufacturer to identify interests, objectives and characteristics of target market might create many difficulties in practice and notably restrict the access of consumers to banking products within the internal market with a risk of discrimination which as an unintended consequence could generate financial exclusion.** Indeed, if a consumer is not in the "target market" and asks for the product, banks will be obliged to deny the access to the product. This obligation should not result in a prohibition for the bank to sell the product to a consumer who is not part of the target market. Consumers should be able to define which product corresponds to their needs.
- Ultimately, the responsibility of contracting a financial agreement also lies with the consumer and we believe a balance should be found between the responsibility of manufacturers and distributors on one hand and of consumers on the other to make the right choice adapted to their needs. Also, sufficient flexibility should be provided for manufacturers to adapt to changing consumer needs and expectations.
- **Through evaluations and assessments on objectives and characteristics of the identified target market for each product, the guidelines introduce a sort of personal/individual suitability assessment on the adequacy of the retail financial services products, even for simple products which is not appropriate.** The issue was analysed in depth by the EU Parliament, the Council and the Commission which rejected the suitability assessment since it was considered not appropriate for products such as mortgage and consumer credit. This is even more true for payment accounts and any other payment service that are considered

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<sup>2</sup> Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features Text with EEA relevance, 28.8.2014, OJEU L 257/214-246.

<sup>3</sup> Proposal for a Directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC, /\* COM/2013/0547 final - 2013/0264 (COD) \*/.

<sup>4</sup> Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card based payment transactions, COM/2013/0550 final- 2013/0265 (COD). The Proposal has been adopted very recently (agreement reached among the EU institutions on 17 December 2014).

<sup>5</sup> Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers, 22.5.2008, OJEU L 133/66.

<sup>6</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance, 28.2.2014, OJEU L 60/34-85.



by European legislation as a fundamental prerequisite for financial inclusion, and whose offer is mandatory according to Directive 92/2014. The words “interests, objectives and characteristics” is therefore not appropriate. It should be more opportune to use expression “*product is appropriate for the target market*”.

- As ascertained in the EBA Impact assessment, this approach would create high organisational costs for manufacturers and distributors (especially when establishing and maintaining suitability/appropriateness assessment for all retail banking products) which will negatively impact on the capability of banks to finance growth, the access of consumers to the banking and financial services products and therefore have questionable benefit for consumers.
- In addition, some of the new requirements set by the Guidelines could have a negative impact on product innovation, as well as have an adverse effect on competition in the market. A diverse product offering, in fact generates benefits for the whole economy with higher price differentiation, boosting competitiveness.
- The proportionality of requirements is central. National Competent Authorities (NCAs) and/or obliged entities should therefore be given sufficient discretion with regard to the application of products oversight and governance standards.
- It is also important to ensure that the industry has sufficient time to implement those guidelines, notably because it will require the review and adoption of IT systems.



## GENERAL QUESTIONS

Question 1: Do you agree with the proposed approach of capturing the entire product life cycle by covering distributors as well as manufacturers?

- **Before new requirements are introduced further assessment of the results of the EU level measures recently undertaken are needed :**

It should be noted that a number of new measures have been undertaken at EU level to clarify the obligations of financial institutions vis-à-vis retail customers, such as Markets in Financial Instruments Directive II (MIFID 2), the Payment Accounts Directive (PAD), the Payment Services Directive (PSD), Interchange Fee Regulation (IFR) (agreement reached in December 2014), Consumer Credit Directive (CCD), Mortgage Credit Directive (MCD) and several European Supervisory Authorities' regulations and guidelines (internal governance, remuneration, operational risk etc.).

A large proportion of these requirements have recently been transposed into national law and the results of these provisions have not yet been seen. Therefore, we believe that before imposing additional requirements in this area, the actual need for further requirements should be based on an analysis which considers all the new requirements laid down in directives, regulations and guidelines.

- **Distinction between Product Manufacturers and Distributors needs to be clarified:**

The current EBA draft guidelines make a distinction between product manufacturers and distributors, however it is unclear how this would apply in practice for banks. It is important to note that bank-wide governance requirements covering both product manufacturers and distributors without making any distinction between both categories already exist.

It might be for example useful to consider the business model: the entity (its structure and instances where the organisation is both distributor and manufacturer) and its size (the size of the market that it operates in).

Furthermore in the draft guidelines (Guidelines 7.1) it is suggested that the choice of distribution channel is the responsibility of the manufacturer which is not aligned with the primary business model used by banks. The choice of the distribution channel should be the responsibility of the distributor that is better placed to bring the product to the market and define the target market according to consumer needs.

- **The EBF believes that the Guidelines should be limited to consumers only:**

According to the Guidelines, the management of conduct risk is not limited to consumers as defined but applies to all potential customers of banks.

The EBF disagrees with the EBA's purpose expressed in the guidelines to leave to the competent authorities' will the decision *"to expand the scope of consumers by also including other persons, such as micro-enterprises or intermediaries other than credit intermediaries"*.

This provision goes against the purpose of having a very clear and stable regulatory framework for financial institutions. In addition, it does not take into account the fact that products for micro-enterprises are often *"tailor-made"* for an individual enterprise (so this does not appear appropriate to define a *"target market"*) and that the relationship between financial institutions and enterprises is not comparable to the relationship between financial institutions and consumers.



## Suggestion for amendment

### 4.1.2 Scope

[...] These guidelines are addressed to competent authorities as defined in Article 4(2) of Regulation EU/1093/2010 (“EBA Regulation”). With regard to the guidelines for distributors listed in title III, competent authorities should either require distributors directly to comply with them or require manufacturers under their supervision **to take reasonable steps to inform the distributors of the guidelines** ~~ensure that distributors comply with them.~~

~~Competent authorities may decide to expand the scope of consumers by also including other persons, such as micro enterprises or intermediaries other than credit intermediaries, by ensuring that the arrangements provided by these guidelines are complied with. [...]~~

Question 2: Do you agree with the delineation of the two sets of requirements for manufacturers and distributors?

- As explained above in the EBF response to question 1, the draft EBA guidelines make a distinction between product manufacturers and distributors, however it is unclear how this would apply in practice for banks. It is important to note that bank wide governance requirements covering both product manufacturers and distributors without making any distinction between both categories, already exist.  
If the manufacturer and the distributor belong to the same group, as regards the repartition and management of responsibilities, one set of rules should apply to the entire organisation (e.g when the distributor is a business unit within a manufacturer).
- However, it is important to note that if the manufacturer and the distributor do not belong to the same group and are totally separated entities, the repartition of obligations between the two entities will not be feasible due to competition issue as well as intellectual property rights and data protection issues (e.g the distributor has to preserve the confidentiality and secure the data provided by the consumer).
- **Guidelines 2.4:** In addition, the requirement that staff involved in designing products are ‘Competent and appropriately trained’ needs to be understood in the context of existing NCA Competency requirements.

Question 3: Are there any additional requirements that you would suggest adding to either of the two sets of requirements? If so, why?

The EBF would like to stress that it is not clear how this Guideline should be achieved.



## SPECIFIC QUESTIONS REGARDING GUIDELINES FOR MANUFACTURERS (TITLE II)

### Question 4: Do you agree with Guideline 1 on establishment, proportionality, review and documentation?

- According to guidelines 1.5 *“Product oversight and governance arrangements should be proportionate to the level of complexity of the product as well as nature, scale and complexity of the relevant business of the manufacturer”*. The EBF believes that the criterion of the “level of complexity” of the product to determine the proportionality of the measures is not sufficient and the risk (e.g risk of capital loss and risk of unavailability of deposits) should be also a criterion. Therefore all the simple or basic products, or at least some of them according to product testing, should be excluded from the scope.
- Furthermore, the requirements must be coordinated with already existing requirements provided in the sectoral directives and taking into consideration the nature of the products (e.g. MiFID for financial instruments). It is important to avoid the creation of parallel requirements.
- It is important to remind, as ascertained in the EBA cost-benefit /Impact assessment analysis , this approach will create high organisational costs for financial institutions: *“the most important cost categories affected by the requirements entailed in these guidelines would include costs for product development and market research, costs for the documentation of the implemented arrangements and disclosure of product information and HR costs (training of sales staff and resources at management level)”* . This would have indeed an impact on financial stability and the capability of banks to finance growth throughout encouraging the access to credit and could have a questionable benefit for consumers.

### Question 5: Do you agree with Guideline 2 on manufacturers’ internal control functions?

Yes, we agree with this Guideline as this follows the traditional organisational structure within banks. However, the EBF considers that amending the product oversight and governance arrangements is not among the duties of the management body which according to GL44<sup>7</sup> is empowered to set the institution' strategy, objectives and overall direction.

The Guidelines 2.2 should be amended accordingly.

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<sup>7</sup> “The management body shall have the overall responsibility for the institution and shall set the institution’s strategy.” “The key responsibilities of the management body should include setting and overseeing:

“a. the overall business strategy of the institution within the applicable legal and regulatory framework taking into account the institution's long-term financial interests and solvency;

“b. the overall risk strategy and policy of the institution, including its risk tolerance/appetite and its risk management framework;

“c. the amounts, types and distribution of both internal capital and own funds adequate to cover the risks of the institution;

“d. a robust and transparent organisational structure with effective communication and reporting channels;

“e. a policy on the nomination and succession of individuals with key functions in the institution;

“f. a remuneration framework that is in line with the risk strategies of the institution;

“g. the governance principles and corporate values of the institution, including through a code of conduct or comparable document; and

“h. an adequate and effective internal control framework, that includes well-functioning Risk Control, Compliance and Internal Audit functions as well as an appropriate financial reporting and accounting framework.”



## Question 6: Do you agree with Guideline 3 on the target market?

It is unclear on which criteria the “target market” should be defined and how the product itself fulfilled the necessary objectives and characteristics. In addition, the EBF believes that Guideline 3 does not take into account the approach that the distributor adopts vis-à-vis consumers which aims at developing personalised retail products and which is reflected in many sectoral European legislation e.g PAD, MCD, CCD etc.

This concept should not result in a prohibition for banks to sell the product to a consumer who is not part of the target market. It is important to take into account that consumers, part of the same target market, might have different needs. Consumers should be able to define which product corresponds to their personal/individual needs.

The role of the manufacturer should be limited to recommend/propose the target market to be potentially considered by the distributor, it should not be interpreted as a mandatory requirement.

### On the concept of “target market” (mostly guidelines 3.1, 3.2, 3.3 and 3.5):

- **The obligation for the manufacturer to identify interests, objectives and characteristics of target market might create many difficulties in practice and notably restrict the access of consumers to financial services within the internal market :**
  - **Guidelines 3.1, 3.2 and 3.3:** The obligation to define the “target market” could create a risk of discrimination on access to financial services products within the single market which as an unintended consequence, could generate financial exclusion. Indeed, if a consumer is not in the “target market” and asks for it, banks will be obliged to deny the access to the product. It will be difficult for banks to justify why consumers have been denied access to some products. Indeed it could be interpreted as discriminatory measure and might be opposed by banks. There is also a risk that this provision may limit the offer of ordinary basic products which would contradict the objectives of the Payment Account Directive and national legislations introducing a right to have a payment account.  
This obligation should not result in a prohibition for the bank to sell the product to a consumer who is not part of the target market. Consumers should be able to define which product corresponds to their needs.
  - **Guidelines 3.2, 3.3, 3.5 and 3.6:** The wording “*interests, objectives and characteristics*” (of the target market) is too close to the wording used in MiFID and could be misinterpreted as introducing “de facto” a suitability assessment which is not appropriate for retail banking products. It should be more opportune to use expression “*product is appropriate for the target market*”.  
As explained above, the suitability assessment issue was analysed in depth by the EU Parliament, the Council and the Commission which rejected the suitability assessment since it was considered not appropriate for products such as mortgage and consumer credit. This is even truer for payment accounts and any other payment service that are considered by European legislation as a fundamental prerequisite for financial inclusion, and whose offer is mandatory according to Directive 92/2014.
- **The concept of “target market” proposed might not be appropriate for all products and could restrict innovation and competition:**



- **Products sold on the internet:** It is not clear how the banks can prevent consumers from buying products considered unlikely to meet their interests, objectives and characteristics – notably in case of products made available through the Internet. Some difficulties may arise when attempting to segment customers into different (e.g. demographic) groups which could be compounded by costly IT solutions that may still prove ineffective and ultimately disproportionate.
- **Basic products:** In general, adequate explanations provided by financial institutions to consumers allow them to make informed choices and to self-segment themselves on basic products and services that are most suited to their needs. The concept of “target market” will therefore not be appropriate for the typology of these basic products. In addition, it would seem inappropriate to apply the proposed methodology and arrangements to payment products and services that PSPs will be forced to offer while there would be very limited or no discretion at all in the product offering itself, and in particular in the selection of the target market.
- **New products (innovation):** When designing new and innovative products, it is challenging, to respond to the specific objectives of consumers because by definition, innovation needs to occur prior to have a clear understanding / specific picture of those (sometimes unexpressed) needs (albeit, the lessons learned from prior product launches can be applied as part of the design process).

**Suggestion for amendment:**

3.1. Manufacturers should include, in their product oversight and governance arrangements, steps and features that need to be followed to identify the relevant target market of a product, **if applicable**.

- **The definition of the “target market” within the EBA draft guidelines for retail banking products are stricter than ESMA technical advice on MiFID 2<sup>8</sup> designed for investment products:** The ESMA Technical advice recognised that an instrument or service might be sold to clients outside the intended target market or where the target market has not been adequately identified. In addition the ESMA technical advice on MiFID 2 reminded that there might be cases where the customer buys a product without a suitability test is conducted (so called execution-only service, when the client did not provide sufficient information to enable the firm to undertake a suitability/ appropriateness assessment), despite the warning that the investment product is inappropriate. The EBA guidelines appear therefore stricter than the ESMA despite the fact that the retail banking products included in the scope are less complex products.
- **The concept of “target market” could create legal uncertainty and increase litigation:** this would occur in situations where a bank has marketed the right product to the right target market but despite this the consumer defaults.

Using the guidelines it would be possible for the consumer to allege that the bank did not identify the right target market. Even if the factors to define the target market are met, the

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<sup>8</sup> [http://www.esma.europa.eu/system/files/2014-1569\\_final\\_report\\_-\\_esmas\\_technical\\_advice\\_to\\_the\\_commission\\_on\\_mifid\\_ii\\_and\\_mifir.pdf](http://www.esma.europa.eu/system/files/2014-1569_final_report_-_esmas_technical_advice_to_the_commission_on_mifid_ii_and_mifir.pdf) (see notably the chapter on product intervention page 187 and on appropriateness page 157)



responsibilities of the borrower will be shifted to the lender and will result in a liability for banks and an increasing risk of litigation (e.g. higher interest rates or fees paid by consumers compared to other products within the bank or among competitors, or e.g. saving products as even if the bank has placed the right savings product to the right target market, it may be that the market development is not favorable). The burden of proof would indeed be for the firm to demonstrate the contrary, in other words creating a situation of “*probatio diabolica*”.

- **Guideline 3.4: We think the suggestion that manufacturers should be prevented from developing or proposing too many product variants could have a detrimental impact for both consumers (whose choice would be reduced) and manufacturers.** We also seek further clarification as to what is meant by “product variants”. Also, it is unclear who would be responsible to identify the appropriate number of product variants that can be offered. This would, in any case, be a very subjective decision. The EBF is concerned that this may have a negative impact on innovation and competition within the market.
- **Guideline 3.5: Interaction with existing ‘suitability requirements’ set out by the National Competent Authority (NCA):** It is not clear how the identification of the market segments for which the product is considered not likely to meet consumer interests, objectives and characteristic and the prevention for offering the market segment, would interact with any existing ‘suitability requirements’ set out by the National Competent Authority (NCA).
- **Guideline 3.6: Further elaboration is needed on the extent of the manufacturer’s duty to assess the degree of financial capability of the target market.** As previously stated the EBF is unsure as to how manufacturers assess the degree of financial capability of the target market’ without making significant assumptions which may in fact exclude consumers unintentionally. It appears unrealistic to expect banks to be in a position where they can fully appreciate the degree of financial capability of the target market.

#### Question 7: Do you agree with Guideline 4 on product testing?

- Some retail banking products are already tested before they are made available to the market. While product testing can be a pre-requisite to achieve sustainable success, the introduction of a formal obligation for product testing for each and every product - which for instance also includes new editions of existing products - regardless of the product's complexity would, in our opinion, create unnecessary costs exceeding the added-value for customers and inhibit new market operators. A systematisation of this process should be avoided as it would indeed restrict innovation, impose important costs for the manufacturers and distributors which could negatively impact on prices.  
In the EBF views this assessment should be jointly conducted by the manufacturer and the distributor and undertaken according to the recently adopted regulations and guidelines (internal governance, operational risk etc.).
- In the EBF’s views the proposed “scenario analysis” is more appropriate to investment products, and is should not be applicable to all retail banking products and services especially considering the fact that some issues will be regulated within PRIIPs at level 2. As already stressed, simple products should be excluded from the scope.  
(e.g. it is unclear how scenario analyses would apply to basic bank accounts or payment cards). Product testing should be required only, “if it is applicable” to the product.



- In addition, the EBF believes that there are challenges to the approach proposed in the guidelines that should be taken into consideration such as:
  - Internal testing – would operation and design need to stand the ‘test of time’?
  - Does it make economic sense and does it meet existing requirements relating to capital and liquidity, credit risk and market risk and how does this fit with the conduct of business rules?; Testing of products during their development is carried out in most cases, but not for example in the case of deposits;
  - Any additional product testing must complement the existing credit stress testing and underwriting processes.
  - The implementation of the new product approval policy (NPAP) should be further clarified.

Suggestion for amendment :

4.1. Before product is designed and brought to the market; an existing product is sold to new target markets; or significant changes to existing product are introduced, the manufacturer **jointly with the distributor ~~should~~ may** conduct product testing, **if it is applicable**, in order to be able to assess how the product would **operate ~~affect its consumers~~** under a wide range of scenarios, including stressed scenarios. **~~Manufacturers should make appropriate product changes where the scenario analysis gives rise to poor results for the target market.~~**

Question 8: Do you agree with Guideline 5 on product monitoring

- Further clarification is needed to understand how this Guideline would be achieved and on a practical level how financial service providers could monitor the products to ensure they continue to meet the interests, objectives and characteristics of the target market.
- It appears very difficult to assess post-sale the financial capability and characteristics of consumers during the entire life cycle of the product post sale, especially with regard to some payment products, some forms of credit and changes to personal circumstances. It may prove difficult for financial services providers to monitor those elements, unless the customer provide such details.
- The wording “on-going basis” should be replaced by a “periodical” which is more appropriate to the current practice of financial institutions.



Suggestion for amendment :

5.1. Once the product is brought to market, the manufacturer ~~is ultimately responsible for product monitoring and~~ should monitor **based on the available information or the information provided by the consumer, on an on-going that** whether the product continues to **be appropriate for** ~~meet the interests, objectives and characteristics of~~ the initial target market.

Question 9: Do you agree with Guideline 6 on remedial action?

- **Guideline 6.1:**
  - **Where the product performance significantly differs from what the manufacturer had originally expected and in such a way that causes consumer detriment.** The EBF considers that the guidelines should not imply that the consumer should not carry the risk that he or she has taken based on informed decision. Indeed, no one can predict the future.
  - **Actions to mitigate the situation and terms and conditions:** The duty to monitor the product on a periodical basis is also connected to the duty to take necessary action to mitigate the situation. However, when the product has been sold to the customer, the service provider cannot unilaterally change the terms and conditions of the product (without prior notice). Different member States have varying regulations in place regarding changes to terms and conditions of long-term client agreements. The EBF considers that the guideline should not stipulate a vaguely worded duty that it is difficult to comply with. If such a duty is presented, the guidelines should give a clear example of what is meant by this kind of action of mitigation taking into account the differences in the contract law among the Member States.

Question 10: Do you agree with Guideline 7 on the selection of distribution channels?

- **Guidelines 7.1 and 7.2:** 7.1 states that the manufacturer should select distribution channels that are appropriate for the particular target market whilst 7.2 states that products can be sold outside the target market on a justified and exceptional basis. The EBF Members are unsure of the impact of these guidelines and seek clarification as to how they may reconcile with each other.
- **Guidelines 7.2 and 7.3:** In the EBF's views these guidelines corresponds to a too large extend to an interference of the manufacturer in the business of the distributor. Indeed, the process described will for example impose to the distributor to share information protected by professional secrecy with the manufacturer to allow the latter to exercise the described duties. This could create difficulties to comply with data protection requirements as the distributor has to preserve the confidentiality and secure the data obtained from the consumer.



Question 11: Do you agree with Guideline 8 on information for distributors?

The EBF agrees in general with Guideline 8. However it is important to note that the total price of the product cannot be defined by the manufacturer because it should include the distribution costs. It is therefore up to the distributor to inform the customer about the final price.

**Suggestion for amendment:**

*“Where relevant, the manufacturer should provide the distributor with a description of the main characteristics of the product; its risks and any limitations; the total price of the product to be borne by the ~~consumer~~, **distributor** including all related fees, charges, and expenses.”*



## SPECIFIC QUESTIONS REGARDING GUIDELINES FOR DISTRIBUTORS (TITLE III)

The objections expressed above also apply to distributors

Question 12: Do you agree with Guideline 1 on establishment, proportionality, review and documentation?

See response to question 4 above.

Question 13: Do you agree with Guideline 2 on the distributor's internal control functions?

See response to question 5 above.

Question 14: Do you agree with Guideline 3 on the knowledge of the target market?

See response to question 6 above.

Question 15: Do you agree with Guideline 4 on information?

- **Guideline 4.2** should be reviewed as it implies that distributors may be able to offer products to consumers outside of the product's target market. Additionally the intent of **Guideline 4.5** is unclear.
- In the EBF's view these guidelines correspond to an interference of the manufacturer in the business of the distributor. The Guidelines would have a negative impact on competition (the distributor might exclude certain products) and could create intellectual property rights and data protection issues (e.g the distributor has to preserve the confidentiality and secure the data provided by the consumer).

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