



*European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken*

EACB comments on the Joint Position of the European Supervisory Authorities on Manufacturers' Product Oversight & Governance Processes

25 February 2014

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3.700 locally operating banks and 71.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850.000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop

The voice of 3.700 local and retail banks, 56 million members, 215 million customers

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19

www.eacb.coop • e-mail : secretariat@eacb.coop



Introduction

The members of EACB have taken note of the initiative of the “Joint Committee” to set a set of high-level, cross- sector principles on financial institutions’ internal product approval process and read the paper with interest. In the below paper, the EACB would like to express some observations on the content of the principles.

General comments

As a general comment, the EACB would like to emphasise that co-operative banks take a keen interest in making sure that they design their operations to serve the interest of their customers. This is motivated by different things. For starters there is the way in which co-operative banks are organised. The co-operative business model is based on democratic values, where clients can become members, and have means to correct the bank through a role in the bank’s governance. In addition, the client/member relationship also provides co-operative banks with direct incentives to satisfy their customers. Indeed, problems with unsatisfied customers will come right back at co-operative banks in the form of reduced membership levels (which impacts the capital base) and – the reverse – a satisfied customer may mean an extra member (and extra capital). And finally, it is important to note that co-operative banks do not have profit making as their primary goal.

With the above in mind, co-operative banks have reviewed the proposed principles in a positive light, considering that product oversight and governance are indeed important processes that need to be well managed.

Having said that, there are a few points in the proposed principles that give rise to concern. They are listed below.

Specific Remarks

Product pre- approval process

The EACB is satisfied noting that the ESAs do not favour the introduction of product approval, licensing and/or prohibition by national competent authorities (NCAs), since it considers that any requirement for pre-approval would be detrimental to product development/innovation and also to clients themselves. A product pre- approval regime could significantly slow down the development and distribution of potentially beneficial financial instruments, while it would increase administrative costs for the industry and the regulatory bodies.

The notion of “target market”

The members of EACB design their products with a primary aim to meet the objectives and interests of their clients. As such, they may well identify a “target market” for the products they design. The EACB considers, however, that over-reliance on the notion of



“target market” should be avoided. It considers that the target market identification by the manufacturer should be understood as a guide for those who advise the client and client him/herself, not as a rigid corset from which no deviation is possible. Indeed, a very rigid and narrow application of the target market principle which only allows that a given product is marketed and distributed to clients within the target group will become problematic if applied in conjunction with the appropriateness or suitability assessments as laid down in the MiFID regime as it currently stands. After all, where the appropriateness and suitability assessments are aimed at looking at the individual client situation (objectives, knowledge, experience and financial situation), the target market concept tends to look at clients as “groups”. The question may arise whether the appropriateness and suitability assessment would still have to be applied once a client has been identified as part of a certain target market. Moreover, a binding definition of “target market” entails the risk, that a client - depending on which target group s/he was identified with - would be systematically cut off from certain products which, in a particular situation, could very well be appropriate/ suitable for him/her. On the contrary, an individual offer of product, depending on the client’s personal situation is, in our view, the only way to fulfil the principle of suitable advice.

In line with the above, we consider that the notion of “target market” and the obligation to “ensure that the product is aligned with the interest and the objectives of, and leads to fair outcomes for the target market” should be interpreted having in mind that in most cases when offering a product there is an individual and personal assessment for each and every client for whom the outcome of his investments cannot be defined or predicted in advance. In addition, a the concept of a “fair outcome” is open to interpretation that can easily be abused in times of economic downturn.

Principles’ focus on manufactures

The EACB acknowledges that the eight principles envisaged in “Joint Position of the European Supervisory Authorities on Manufacturers’ Product Oversight & Governance Processes” focus on the manufacturer. However, it should be considered that in certain cases the intermediary/ distributor offering the product is in a better position to reflect on the reaction of the market; especially where this distributor –as is the case in some Member States- is contractually engaged with a consumer on the basis of exclusivity. In many cases the manufacturers do not have contact - or marginal, if at all - with the clients making it difficult to react in a timely manner.

This is especially true for principle VIII which requires the manufacturer to take “appropriate action” when issues that may lead to consumer detriment have arisen. The formulation of VIII is so open that it is difficult to know when an action a manufacturer might have taken is or can be considered “appropriate”. Indeed, the notion of “appropriate action” constitutes a highly ambiguous term which may lead to difficulties in the context of legal interpretation and jeopardise legal certainty. We consider that the way this principle has been formulated leaves ample room for the manufacturer to be held liable for not taking “appropriate action” in an improper and even abusive manner.

Considering principle VII we understand that the need to review a product during its lifecycle may arise and we support the implementation of a review policy in the context of a product oversight and governance process. However, it should be stressed that such a review cannot have any retro- active effect.



Conclusion

In conclusion, we welcome the approach taken by the Joint Committee to rely on internal product approval process for product manufactures. At the same time, we support the approach that the notion of “target market” is envisaged as an indication and not as a binding condition for distribution.

The EACB is looking forward to working with the ESAs in the possible development of more detailed provisions for the oversight and governance of banking products in their respective sector at a later stage.

The EACB would greatly appreciate, if its comments are taken into account in the on-going preparation in this area for the future guidelines and/ or other legislative measures.

Of course, we are at your disposal to further discuss in detail our approach and to provide any additional information necessary in that regard.

Contact:

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department (m.vanberkel@eachb.coop)
- Ms Ilektra Zarzoura, Adviser, Financial markets (i.zarzoura@eachb.coop)
- Ms Else Boekesteijn, Adviser, Retail banking/ Consumer Policy

(e.boekesteijn@eachb.coop)