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EIOPA consults on revised preparatory Guidelines on product oversight and governance

Introduction

On 30 October 2015, the European Insurance and Occupational Pensions Authority (“**EIOPA**”) published a consultation paper (the “**Consultation Paper**”) on revised proposals for “Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors” (the “**Guidelines**”).

The Guidelines aim to support national competent authorities (“**NCA**”)s in taking all necessary steps during the preparatory period leading up to the transposition and implementation of the Insurance Distribution Directive (“**IDD**”)¹. In particular, the Guidelines are meant to provide some colour on the requirements on product oversight and governance arrangements, which are set out in Article 21a of the IDD which provides that;

“Insurance undertakings, as well as intermediaries which manufacture any insurance product for sale to customers, shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers”.

¹ The European Council (“**EC**”) still has to adopt the IDD. When the IDD is adopted by the EC, it will be published in the Official Journal, and Member States will have to transpose the IDD into national laws. Therefore it is expected that Member States will be obliged to implement the IDD in January 2018.

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The Guidelines cover arrangements that generally apply to insurance undertakings and insurance distributors when selling insurance products to customers and are designed to ensure that NCAs follow a consistent approach in the period before the IDD is implemented. In addition, the Guidelines take account of certain of the objectives of Solvency II, the main objective of which is to ensure “adequate protection of policyholders and beneficiaries”².

Content Overview

The arrangements outlined in the Guidelines refer to internal processes, functions and strategies for designing and bringing products to the market, as well as monitoring and reviewing them over their life cycle. The arrangements differ depending on whether the entity is acting as a manufacturer (Chapter 1) or as a distributor (Chapter 2) of an insurance product, and refer to steps such as the firm being required to:

a) *Manufacturer (Chapter 1)*

- (i) establish and implement product oversight and governance arrangements in written policy document (to support management of conflicts of interests, and protect interests of customers);
- (ii) the management body of the Manufacturer should endorse and be ultimately responsible for ensuring that such product oversight and governance arrangements are properly implemented;
- (iii) product oversight and governance arrangements should be reviewed on an on-going basis;
- (iv) identify a target market for which the product is considered appropriate;
- (v) ensure that relevant personnel involved in designing products should possess the necessary skills, knowledge and expertise in order to properly understand the product’s main features and characteristics;
- (vi) conduct appropriate testing of the product, including scenario analyses, and continue to ensure that the product is aligned to the target market after distribution;
- (vii) identify the relevant distribution channels taking into account the characteristics of the target market and of the product; and
- (viii) verify that distribution channels act in compliance with the manufacturer’s product and oversight and governance arrangements.

b) *Distributor (Chapter 2)*

- (i) establish and implement product distribution arrangements that set out appropriate measures and procedures for considering the range of products and services the distributor intends to offer to its customers;
- (ii) the management body of the distributor should be ultimately responsible for ensuring that such product distribution arrangement are properly implemented;

² Recital 16 of Solvency II

- (iii) obtain all necessary information on the target market from the Manufacturer to ensure that it can fulfil all of its regulatory responsibilities towards the customers;
- (iv) regular review of product distribution arrangements;
- (v) provide the Manufacturer with sale information on an on-going basis and in particular notify the Manufacturer if it becomes aware that the product is not aligned with the interests, objectives and characteristics of the target market; and
- (vi) maintain appropriate records in relation to product distribution arrangements.

The Guidelines provide that the management body of the relevant insurance undertaking should endorse and be ultimately responsible for the establishment, implementation, subsequent review and continued internal compliance with the product oversight and governance arrangements.

Next Steps

EIOPA is inviting comments on the Guidelines until 29 January 2016. EIOPA will take account of any comments received, and intends to publish a final report on the consultation and submit the final Guidelines for adoption by its Board of Supervisors in the second quarter of 2016.

It is also important to note that, as the Guidelines are “preparatory” in nature, EIOPA does not intend that NCAs take enforcement action if they become aware of practices in firms that are not fully in line with the Guidelines. In such cases, NCAs should discuss with the relevant firms possible ways for appropriate remedial action.

The Consultation Paper is available on EIOPA’s website at this link; <https://eiopa.europa.eu/Pages/News/EIOPA-consults-on-revised-preparatory-Guidelines-on-product-oversight-and-governance.aspx>

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