

Product Intervention and Product Governance Sourcebook (PROD)

Chapter 1

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1.1 Application and purpose

Purpose

- 1.1.1 **G** The purpose of *PROD* is to improve *firms'* product oversight and governance processes and to set out the *FCA's* statement of policy on making *temporary product intervention rules*.
- 1.1.2 **G** Product oversight and governance refers to the systems and controls *firms* have in place to design, approve, market and manage products throughout the products' lifecycle to ensure they meet legal and regulatory requirements.
- 1.1.3 **G** Good product governance should result in products that:
- (1) meet the needs of one or more identifiable target markets;
 - (2) are sold to clients in the target markets by appropriate *distribution channels*; and
 - (3) deliver appropriate *client* outcomes.



1.2 Application of PROD 2

1.2.1

R

■ PROD 2 sets out the FCA’s approach to issuing *temporary product intervention rules*. It is of relevance to all *firms*.

1.3 Application of PROD 3

General: Who? What?

- 1.3.1 **R** ■ PROD 3 applies to
- (1) a *MiFID investment firm*;
 - (2) a *CRD credit institution*;
 - (3) a *MiFID optional exemption firm*; and
 - (4) *branches of third country investment firms*; with respect to:
 - (5) *manufacturing financial instruments and structured deposits*; and
 - (6) *distributing financial instruments, structured deposits and investment services*.
- [Note: articles 1(3), 1(4), 16(3), 24(2) and 41(2) of *MiFID*]

Other firms manufacturing or distributing financial instruments or structured deposits

- 1.3.2 **R** Other *firms which manufacture or distribute financial instruments or structured deposits* should take account of ■ PROD 3 as if it were *guidance* on the *Principles* and other relevant *rules* and as if "should" appeared in ■ PROD 3 rules instead of "must".

Eligible counterparty business

- 1.3.3 **R** ■ PROD 3.3.1R does not apply to *eligible counterparty business*.
- [Note: article 30(1) of *MiFID*]

Where?

- 1.3.4 **R** ■ PROD 3 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.
- 1.3.5 **R** (1) ■ PROD 3 also applies to a *firm* with respect to activities from an establishment *overseas* with a *client* in the *United Kingdom*.

- (2) But ■ PROD 3 does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:
 - (a) would fall within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*; or
 - (b) would not be regarded as being carried on in the *United Kingdom*.

EEA territorial scope rule: compatibility with European law

- 1.3.6 **R** (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see ■ PROD 1.3.7G to ■ PROD 1.3.10G for guidance on this).
- (2) This *rule* overrides every other *rule* in this sourcebook.

Effects of the EEA territorial scope rule

- 1.3.7 **G** One of the effects of ■ PROD 1.3.6R is to override the application of this sourcebook to the *overseas* establishments of *EEA firms* in circumstances covered by *MiFID*.

- 1.3.8 **G** The *guidance* in this chapter provides a general overview only and is not comprehensive.

- 1.3.9 **G** When considering the impact of a directive on the territorial application of a *rule*, a *firm* will first need to consider whether the relevant situation involves a non-UK element. ■ PROD 1.3.6R is unlikely to apply if a *UK firm* is doing business in a *UK establishment* for a *client* located in the *United Kingdom* in relation to a *UK product*, in other words ■ PROD 3 will apply to the *UK firm*. However, if there is a non-UK element, the *firm* should consider whether:

- (1) it is subject to the directive (in general, directives only apply to *UK firms* and *EEA firms*, but the implementing provisions may not treat non-*EEA firms* more favourably than *EEA firms*);
- (2) the business it is performing is subject to the directive; and
- (3) the particular *rule* is within the scope of the directive.

If the answer to all three questions is 'yes', ■ PROD 1.3.6R may change the application of the *rules* in this sourcebook.

- 1.3.10 **G** When considering a particular situation, a *firm* should also consider whether two or more directives apply.

MiFID: effect on territorial scope

- 1.3.11 **G** ■ PERG 13 contains general *guidance* on the *persons* and businesses to which *MiFID* applies.

1.3.12 **G** For a *UK MiFID investment firm*, rules in this sourcebook that are within the scope of *MiFID* generally apply to its *MiFID business* carried on from an establishment in the *United Kingdom*. They also generally apply to its *MiFID business* carried on from an establishment in another *EEA State*, although in the case of rules that implement article 24(2) *MiFID* only where that business is not carried on within the territory of that *EEA State*. Where a *MiFID investment firm* carries on *MiFID business* from a branch in another *EEA State*, organisational requirements, including rules implementing product manufacture obligations under article 16 *MiFID* are home state requirements and therefore *FCA* responsibility (see ■ SUP 13A Annex 1G).

[Note: see articles 34(1) and 35(1) and (8) of *MiFID*]

1.3.13 **G** For an *EEA MiFID investment firm*, rules in this sourcebook that are within the scope of *MiFID* generally apply only to its *MiFID business* if that business is carried on from an establishment in, and within the territory of, the *United Kingdom* and only to the extent that the rules implement article 24(2) of *MiFID*.

[Note: see articles 35(1) and (8) of *MiFID*]

Electronic Commerce Directive: effect on territorial scope

1.3.14 **G** The guidance on the *Electronic Commerce Directive* in ■ COBS 1 Annex 1, Part 3, paragraph 7 applies equally in relation to the rules in ■ PROD 3.

Interaction of PROD 3 and the RPPD Guide

1.3.15 **G** A firm to which ■ PROD 3 applies need not apply the guidance in *RPPD* for matters covered by *PROD* if the firm has complied with ■ PROD 3.

1.4 Application of PROD 4

- 1.4.1** **R** ■ PROD 4 applies to:
- (1) an *insurance intermediary*; and
 - (2) an *insurer*,
- with respect to:
- (3) *manufacturing* insurance products; and
 - (4) *distributing* insurance products.
- [Note: articles 1(2) and 25 of the *IDD*]
- 1.4.2** **G** In *PROD* an insurance product may be read as being a reference to the product for distribution to *customers* generally and is not intended to refer to each individual *contract of insurance* being sold or underwritten (unless the context indicates otherwise).
- 1.4.3** **R** ■ PROD 4 does not apply in relation to the *manufacturing* or *distributing* of:
- (1) a *contract of large risks*, or
 - (2) a *reinsurance contract*.
- [Note: article 25(4) of the *IDD*]
- 1.4.4** **EU** **When an intermediary may be considered to be manufacturing.**
- 3(1) For the purposes of Article 25(1) of Directive (EU) 2016/97, insurance intermediaries shall be considered manufacturers where an overall analysis of their activity shows that they have a decision-making role in designing and developing an insurance product for the market.
- 3(2) A decision-making role shall be assumed, in particular, where insurance intermediaries autonomously determine the essential features and main elements of an insurance product, including its coverage, price, costs, risk, target market and compensation and guarantee rights, which are not substantially modified by the insurance undertaking providing coverage for the insurance product.

3(3) Personalisation of and adaptation of existing insurance products in the context of insurance distribution activities for individual customers, as well as the design of tailor-made contracts at the request of a single customer, shall not be considered manufacturing.

[Note: article 3 of the *IDD POG Regulation*]

1.4.5 **G** The effect of ■ PROD 1.4.3EU and ■ PROD 1.4.6R is that an *insurance intermediary* needs to consider if it is *manufacturing* an insurance product and, if so, should comply with ■ PROD 4.2 (Manufacture of insurance products).

Effect of provisions marked “EU”

1.4.6 **R** (1) Subject to (2) and ■ PROD 1.4.3R, provisions in this section and in ■ PROD 4 marked “EU” apply to *firms manufacturing or distributing* insurance products, but to whom the *IDD POG Regulation* does not apply, as if they were *rules*.

(2) For the purposes of (1), a word or phrase used in the *IDD POG Regulation* and referred to in column (A) has the meaning indicated in Column (B) of the table below:

(a)	(b)
“Article 17(1) of Directive (EU) 2016/97”	ICOB5 2.5.-1R, in relation to a <i>non-investment insurance contract</i> , or COBS 2.1.1R, in relation to a <i>life policy</i>
“Article 25(1) of Directive (EU) 2016/97”	PROD 4.2.1R and PROD 4.2.2R
“Article 8(2)”	PROD 4.2.30EU
“competent authorities”	FCA
“customer” and “potential customer”	<i>customer</i>
“Directive (EU) 2016/97”	<i>IDD</i>
“insurance-based investment products”	<i>insurance-based investment products</i>
“insurance distribution activities” and “distribution activities”	<i>insurance distribution activities</i>
“insurance distributor”	<i>distributor</i>
“insurance intermediary”	<i>insurance intermediary</i>
“insurance undertaking”	<i>insurer</i>
“manufacturer” and “manufacturers within the meaning of Article 2 of this Delegated Regulation”	<i>manufacturer</i>
“manufacturing”	<i>manufacturing</i>
“shall”	must

(3) In this sourcebook, where a reproduced provision of an article of the *IDD POG Regulation* refers to another part of the *IDD POG Regulation*, that other provision must also be read with reference to the table in (2).

Where?

1.4.7 **R** ■ PROD 4 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.
[Note: article 7(2) of the *IDD*]

EEA territorial scope rule: compatibility with European law

1.4.8 **R** (1) The territorial scope of ■ PROD 4 is modified to the extent necessary to be compatible with European law.
(2) This *rule* overrides every other *rule* in this sourcebook.

Electronic Commerce Directive: effect on territorial scope

1.4.9 **G** The *rules* and *guidance* on the *E-Commerce Directive* in ■ ICBS 1 Annex 1, Part 3, paragraph 1.2R and Part 4 paragraph 8, and in ■ COBS 1 Annex 1, Part 2, paragraph 1.2R and Part 3, paragraph 7, apply equally in relation to the *rules* in ■ PROD 4.

Interaction of PROD 4 and the RPPD Guide

1.4.10 **G** A *firm* to which ■ PROD 4 applies need not apply the *guidance* in *RPPD* for matters covered by *PROD* if the *firm* has complied with ■ PROD 4 (see also ■ PROD 4.4.2G). ■ PROD 4.4 includes *guidance* based on the *RPPD* which *firms* subject to ■ PROD 4 should apply.

1.5 Application of PROD 5

General: Who? What?

- 1.5.1 **R** ■ PROD 5 applies to a *firm* which:
- (1) offers to sell an *extended warranty* to a *customer*; or
 - (2) refers, invites or induces a *customer* to obtain an *extended warranty* from a person connected to the *firm*;
- in connection with the entering into of a *rent-to-own agreement* with the *firm*.

- 1.5.2 **G** A *person* connected to the *firm* includes someone who has a relevant business relationship with the *firm*.

Where?

- 1.5.3 **R** ■ PROD 5 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

EEA territorial scope rule: compatibility with European law

- 1.5.4 **R**
- (1) The territorial scope of ■ PROD 5 is modified to the extent necessary to make it compatible with European law (see ■ PROD 1.5.5G to ■ PROD 1.5.7G for *guidance* on this).
 - (2) This *rule* overrides every other *rule* in ■ PROD 5.

Effects of the EEA territorial scope rule

- 1.5.5 **G** The *guidance* in paragraph 2 of Part 4 of ■ ICODS 1 Annex 1 applies equally to the *rules* in ■ PROD 5.

IDD, Solvency II, DMD: effect on territorial scope

1.5.6 **G** The *guidance* on the *IDD, Solvency II* and *Distance Marketing Directive* in ■ IC OBS 1 Annex 1 in relation to ■ IC OBS 6A.1.4R applies equally to ■ PROD 5.1.1R (to the extent that the *extended warranty* is a *contract of insurance*).

Electronic Commerce Directive: effect on territorial scope

1.5.7 **G** The *guidance* on the *Electronic Commerce Directive* in ■ IC OBS 1 Annex 1, Part 4, paragraph 8 applies equally in relation to the *rules* in ■ PROD 5.

