

EIOPA'S CONDUCT OF BUSINESS SUPERVISION STRATEGY

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Introduction

This paper sets out EIOPA's Strategic Approach to a comprehensive risk-based and preventive framework for conduct of business supervision on a European level. It contains the following sections:

- The paper starts by formulating EIOPA's Strategic approach in the context of EIOPA's legal remit, strategic goals and the regulatory environment;
- It then goes on to outline the governance structure supporting the implementation of the approach, including project management;
- The main tools employed and their purposes are introduced;
- The paper ends with the strategic approach towards advancing supervisory convergence.

EIOPA adopted a "Strategy towards a comprehensive risk-based and preventive framework for conduct of business supervision" (CoB Supervision Strategy) in September 2015.¹ This strategy was followed up by the publication of the next steps for the strategy in 2018.²

The CoB Supervision Strategy has been implemented by EIOPA during the first few years through the incremental development of the tools outlined in the Strategy: Thematic Reviews, the Consumer Trends Report, Retail Risk Indicators, and Enhanced Market Monitoring.

In the meantime, the regulatory environment has become increasingly developed at the European level in the conduct area, following the implementation of the Insurance Distribution Directive (IDD) and the Regulation on Packaged Retail and Insurance-based Investment Products (PRIIPs).³ While this was anticipated by the CoB Supervision Strategy in 2015, it places a particular emphasis on ensuring supervisory convergence in respect of these instruments as these frameworks mature.

More generally, EIOPA has elaborated a clear strategic focus on driving practical supervisory convergence, in connection to a general shift from more 'regulatory' to 'supervisory' work in the insurance area.⁴ While in its initial construction the emphasis

¹https://eiopa.europa.eu/Publications/Reports/EIOPA-16-015_EIOPA_Strategy_on_Conduct_Supervision_Framework_sanitised.pdf

² https://www.eiopa.europa.eu/content/conduct-business-strategy-next-steps_en

³ See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0097&from=en> and <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1286&from=EN>

⁴<https://eiopa.europa.eu/Publications/Administrative/EIOPA%20SPD%202017-2019%20including%20AWP%202018.pdf>

has been more on the extensive work of EIOPA in the context of Solvency II, the shift in EIOPA's centre of gravity towards supervisory convergence issues is just as relevant from a conduct perspective as from a prudential perspective. This is also reflected by:

- The increased focus on supervisory aspects resulting from the COVID-19 crisis which covered both conduct and prudential aspects;
- The work carried out to develop and monitor the Union wide strategic supervisory priorities formulated by EIOPA in 2021 which are both conduct and prudential priorities.

The COVID-19 crisis has had a significant impact on the insurance sector from a conduct and consumer protection perspective. At the onset of the crisis, with consumer disposable income deteriorating, loss of employment, market shocks emerging and insurance undertakings and intermediaries shifting to remote working arrangements, significant concerns for consumers emerged. Issues such as consumer vulnerability, exclusions and the continuing digitalisation have moved to the forefront and require continuous adaptation of our supervisory framework for it to remain effective and comprehensive.

The next steps – as outlined in the 2018 update – have been implemented: launch country visits, include conduct risk specific aspects in EIOPA's supervisory handbook, include conduct supervision in EIOPA's supervisory convergence plan, promote further exchanges amongst NCAs on practical conduct supervision, further improve market monitoring and proportionate use of data for risk-based and preventative supervision.

These steps have proved to be effective in achieving our strategic objectives, in particular in light of the developments mentioned earlier, and continue to form the basis of our approach. Therefore our strategy continues to emphasise:

- *driving supervisory convergence in practical CoB supervision, including notably the supervision of the IDD, PRIIPS and PEPP;*
- *assist in developing new tools to promote more effective conduct supervision;*
- *further enhancing market monitoring and conduct risk assessment, to build practical and proportionate supervisory capacities across the EU.*

EIOPA's Conduct of Business Supervision Strategy

EIOPA's key strategic objective is to "drive forward conduct of business regulation and supervision to the benefit of consumer"⁵.

The long-term aim of the CoB Supervision Strategy is to achieve ***harmonised conduct of business supervision, which is preventative and risk-based, across Member States.***

The governance, tools and methodologies outlined in this document are all designed to contribute to this long-term aim which captures both supervisory convergence as well as forward-looking conduct of business supervision. As such, the CoB Supervision Strategy is characterised by the following elements:

- It underlines the importance of evidence-led and proportionate supervision for NCAs and for EIOPA, focusing resources in a risk-based manner, and adapting to changing evidence;
- It foregrounds a preventative and proactive perspective, rather than one which is more reactive and thereby passive;
- It employs durable tools and reports to inform the public, guide and assists NCA's and industry participants with ongoing consumer trends reporting; market monitoring; the use of thematic reviews; and the development of retail risk indicators.

To this end, the strategic priorities are:

- *Supervisory Convergence - Maintain and advance a coordinated and effective consumer protection framework and ensure practical and convergent implementation of conduct supervision;*
- *Supervisory Tools - Maintain and advance the supervisory capacity to identify conduct risks and proactively address poor consumer outcomes, where necessary.*

Strategic Goals and Legal Remit

Conduct of business risk can be described as the risk to consumers, insurance undertakings, the insurance market as a whole and insurance market as a part of the financial sector that arise from insurance undertakings and/or insurance intermediaries conducting their business in a way that does not ensure fair treatment of consumers.

⁵ See EIOPA's single programming document pages 21-23. <https://www.eiopa.europa.eu/sites/default/files/publications/administrative/eiopa-bos-21-033-revised-single-programming-document-2021-2023.pdf>

Poor conduct outcomes may result from the characteristics of the insurance products themselves, as well as from the distribution channels chosen for bringing them to the market, the business model, the selling practices and the activities related to the post-sale phase (e.g. handling of claims). A strengthening of conduct of business supervision is important for consumers, for insurance undertakings and for the market as a whole, as it promotes the orderly functioning of markets resulting in a level playing field, a healthy competitive environment, increased consumer confidence, trust in financial services and financial stability. For supervisors, an effective and efficient conduct of business supervisory framework contributes to a credible deterrence of market misconduct and allows for pre-emptive and proactive supervision by acting before a developing issue becomes widespread.

A consistent European framework for CoB supervision supports EIOPA in achieving its goals of ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial institutions. Furthermore, it fosters coherent application of rules for financial institutions and markets across the EU, promote a coordinated EU supervisory response and act preventively when a conduct of business risk emerges in one or several jurisdiction before it spreads to other Member States. Given that EIOPA's Founding Regulation⁶ refers to "fostering protection of policyholders, pension scheme members and beneficiaries", the framework primary focus is on retail consumers.

Legal basis

The development of a risk-based and preventive framework for conduct of business supervision is fully in line with several legal provisions of the EIOPA Regulation, in specific, Articles 1, 8, 9, 29 and 35.

These provisions are complemented with specific European sectoral legislation; for instance, Article 27 of Solvency II⁷ states that supervisory authorities should be provided with all the necessary means to achieve their objectives, *namely the protection of policyholders and beneficiaries*. Moreover, Articles 15 and 16 of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation⁸ specifically require EIOPA to monitor the market, in this case for insurance-based investment products,

⁶ Regulation 1094/2010 Of the European Parliament and of the Council of 24 November 2010; available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0048:0083:EN:PDF>.

⁷ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009; available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:335:0001:0155:en:PDF>.

⁸ Regulation 1286/2014 of the European Parliament and of the Council of 26 November 2014; available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1286&qid=1450195857264&from=EN>.

and where appropriate, temporarily restrict or prohibit such products in the EU. There is a general requirement for EIOPA under its Founding Regulation Article 9(2) to “*monitor new and existing financial activities*”, which is linked to a power for EIOPA to issue warnings in the event that a financial activity poses a serious threat to its statutory objectives. In addition, there is the requirement under the PRIIPs Regulation for EIOPA to “*monitor the market for insurance-based investment products marketed, distributed or sold in the Union*” and for NCAs required to monitor their national markets for insurance-based investment products. Furthermore, the IDD states in Article 1 that “*Member States shall ensure that competent authorities monitor the market, including the market for ancillary insurance products which are marketed, distributed or sold in, or from, their Member State*” and that EIOPA may facilitate and coordinate such monitoring.

Strategic goals

One of EIOPA’s main Strategic Goals is “*to ensure transparency, simplicity, accessibility and fairness across the internal market for consumers*”. This is based on the requirement under its empowering Regulation for EIOPA to “*take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market*”. This “leading role” closely complements the need for EIOPA to take a proactive role in intervening early to tackle tangible risks of consumer detriment, which is a fundamental element of the proposed comprehensive risk-based and preventive framework for conduct of business supervision.

EIOPA’s empowering Regulation also provides that, as one of its key tasks in the area of consumer protection, that EIOPA should “*develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on consumer protection*”. This provides a clear basis for the tools needed to implement the framework. Moreover, EIOPA carries out a number of activities, such as thematic reviews, developing retail risk indicators and coordinating mystery shopping to ensure consumer protection. This further highlights the need for the new tools included in this strategy.

Conduct issues can negatively affect consumers and have wider prudential impacts on undertakings. Fragmentation in EU conduct of business regulation and supervision has only to some extent been mitigated by new EU regulation such as the IDD and the PRIIPs Regulation. EIOPA can assist in building a more coordinated and effective consumer protection framework and drive forward its practical and convergent

implementation. This will ensure a higher, more effective and consistent level of regulation and supervision, strengthening the Single Market by fostering coherent and consistent application of rules. Equally, it will build supervisory capacity to identify conduct risks and proactively address poor consumer outcomes, where necessary.

Next to qualitative information received from various sources, EIOPA increasingly relies on the use of data to monitor the markets and identify and report on conduct risks and consumer trends. Further development of EIOPA's data capabilities is instrumental in achieving its strategic goals and consequently is a key priority.

Preventive and risk-based conduct supervision

There is a clear need for a more consumer-centric culture in firms – senior management need to take on more responsibility to prevent poor product oversight and misaligned incentives. Also, the financial crisis and now the COVID-19 crisis have shown that certain groups of consumers in certain situations can be particularly vulnerable. Accordingly, a risk-based approach to conduct of business supervision involves attention dedicated to the protection of vulnerable groups.

In addition, the growing digitalisation of financial services (e.g. comparison websites, social media, automated advice) poses new risks for consumers and poses specific challenges in terms of ensuring conduct regulation keeps pace with those new risks. Recently, greenwashing has emerged a risk whereby consumer detriment has additional negative externalities which need to be captured in risk-based conduct supervision.

Conduct issues not only harm individual consumers, but can have wider prudential impact as seen with the Payment Protection Insurance mis-selling scandal in the UK. Indeed, at national level, there are different approaches to addressing conduct risks with differences in priority setting and levels of resources allocated. These divergences in models and practices across the EU can reinforce the current fragmented situation.

Moreover, poor conduct of business – such as mass mis-selling – can have a systemic impact on the market, i.e. contribute to the development of systemic risk. The overall aim of a conduct of business supervisory framework is to avoid or to become aware of consumer detriment sufficiently early in its development to be still in a position to act.

Considering the highly fragmented situation across the EU, the different NCA's approaches, current status and available resources for addressing conduct of business supervision in Member States, convergence across the EU should take these differences into account. However, this does not imply moving at the pace of the least developed approach. A satisfactory balance must be struck in considering the cost of applying

certain measures in smaller markets. The application of the proportionality principle of EU legislation as enshrined in Article 5(1) of the Treaty on European Union allows the national dimension of actions envisaged to be taken into account.

More specifically, the proposed framework is based on a two pronged approach, which is:

- Risk-based, i.e. identifying the depth and scale of issues and focussing priorities and resources where they matter most in order to build a common European supervisory perspective and approach, with constant monitoring and “dynamic” capacity to respond to innovation and change; and
- Preventive, i.e. anticipating consumer detriment early, rather than just reacting following the emergence of problems – solve the problems of the future, rather than the past. This can only be done through a forward-looking approach, which concentrates on how to best identify and tackle, in a timely and effective manner, emerging risks for consumers. Market monitoring, data gathering and the ability to read data intelligently are crucial to this approach.

Central to both of these aspects is the relationships between supervisors and firms, rooted in firm's internalisation of a consumer-centric culture, with supervisors routinely capable of challenging firms on their culture as well as their “bottom line”.

In this manner, exploring issues that go beyond purely one national market where those issues have a cross-border element to them or where they arise in several national markets, helps to build a coordinated understanding across those markets and is thereby beneficial for European consumers. It goes without saying that, in cross-border situations, EIOPA will give due consideration to the split of home/host competencies under existing EU Directives. In the same vein, it would not only help NCAs to comply with the above-mentioned market monitoring obligation but also to establish effective conduct risk regimes where this is not already the case.

Governance

Organisation

The development and execution of the framework for conduct of business supervision predominantly relies on EIOPA's internal resources where EIOPA ensures planning, coordination, information sharing and, ultimately, a consistent European framework.

EIOPA's commitment to allocate resources for the development of a conduct of business supervision framework and the effective implementation of the tools envisaged is set out in EIOPA's Multi-Annual Work Programme 2021-2023.

The main unit responsible for overseeing conduct of business supervision across Europe is Conduct Oversight.

Interaction with the NCAs

Ensuring strong cooperation between EIOPA and NCAs is key to the implementation of the framework for conduct of business supervision. NCAs have first-hand knowledge of conduct of business risk in their jurisdictions. In addition, some NCAs have well established conduct of business supervisory practices. NCAs will have an active participation in the development and implementation of the proposed framework by expressing their views, sharing their experiences and information among other NCAs and EIOPA and supporting the practical work.

The Committee on Consumer Protection and Financial Innovation (CCPFI) has been involved in the development and implementation of the tools being used under the framework. Moving forward, the CCPFI will continue to play an important role in the development of the framework.

In addition, EIOPA will rely to the extent possible on available data. If needed, EIOPA will target a streamlined process for data collection which will avoid multiple data collections within a short timeframe and make use of data that is already or will be available on a regular basis (e.g. under the Solvency II reporting framework for lines of business level information).

Interaction with the other European Supervisory Authorities

EIOPA continues to foster coordination and cooperation with the other European Supervisory Authorities (ESAs) on similar frameworks to establish a level-playing field for conduct of business, ensure cross-sectoral consistency and assess the impact of cross-sectoral product intervention.

EIOPA and the other ESAs continue to build on past and current work under the auspices of the Joint Committee. This was stated in the European Commission's Report on the operation of the ESAs and the European System of Financial Supervision (ESFS) that, *"to ensure a framework consistent across sectors and appropriate coordination of the ESAs' activities, more use could be made of the Joint Committee (JC). This could be achieved for instance, by the exchange of best practices between the authorities which would allow for better definition and clarification of their relevant competences in line with the legal basis"*.

Examples of past coordination and cooperation, that are illustrative of good practices to be carried forward, include several regulatory measures such as the Guidelines on Complaints-Handling (which was explicitly referred to in the ESFS Report) and the Guidelines under the IDD on IBIPS that incorporate a structure which makes it difficult for the customer to understand the risks involved, which are focused on retail conduct risks in particular, and the Joint Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates.

Decision-making

The primary decision-making body is the Board of Supervisors (BoS)⁹. BoS proposals are first discussed and agreed upon in the CCPFI. Conduct issues which span across the financial services industries may have to be agreed in the BoS of multiple ESA's and be prepared by the JC CCPFI.

The CCPFI and JC CCPFI are supported by topic-specific platforms / working groups which are composed of experts of the NCA's together with staff of the ESA's.

⁹ https://www.eiopa.europa.eu/sites/default/files/publications/administrative/bos-rules_of_procedure.pdf

Decision-Making



Prioritisation

The range of conduct of business issues which are of supervisory relevance is wide. How to make an informed decision on which to address at a European level requires constant calibration. Prioritisation is currently done in the Single Programming Document and Annual Work Programme and follows from the outcomes of tools as described in the next chapter.

This approach has been further developed for the purposes of the Consumer Trends Report and for identifying Union-wide strategic supervisory priorities.

Project Management and Governance

Much of the work carried out by Conduct Oversight is project-based; thematic review, product intervention and the development of supervisory (convergence) tools. Efficient and transparent project management and governance therefore contribute greatly to EIOPA's ability to achieve its objectives. EIOPA has matured as an organisation and conduct of business supervision has become a fundamental pillar of financial supervision.

EIOPA overall implements project management disciplines in identifying key projects from a resource, impact and risk perspective, with proportionate reporting, management oversight and contingency planning. Projects undertaken for the purpose of the CoB supervision strategy can fall within EIOPA's overall portfolio of projects; otherwise project disciplines will apply as relevant to the complexity of each project and its interdependency with other projects or activities of EIOPA or NCAs

Tools

As noted above, all NCAs, regardless of competencies and resources, face significant challenges identifying conduct and consumer protection risks sufficiently early and sufficiently clearly for the preventative goals of the CoB Supervision Strategy.

This reflects the many ways in which market practices can lead to conflicts of interest that are difficult to identify and mitigate, the information asymmetries arising all along the insurance and pension value chains, and the challenges that arise with consumer behaviours in the financial markets.

In this respect, risk-based and preventative supervision depends to a significant degree on the availability and comparability of relevant conduct related data and, critically, market intelligence and robust supervisory challenge around business models from a conduct perspective, yet EIOPA considers that these remain under-developed with significant room for improvement. In addition, evidence of consumer detriment is also crucial in supervision and enforcement.

For its work on identifying and monitoring conduct risks in a preventative manner, EIOPA employs a number of tools in order to achieve its strategic goals mainly in the area of market monitoring. EIOPA continuously enhances these core tools and develops new tools for its risk-based conduct of business framework with a focus on data collection and use. Increasingly, the development of new tools involves the application of technical solutions in support of supervision (sometimes referred to as "suptech").

Each of the tools presented relies on structured information gathered from various sources. EIOPA has invested considerably over the past years in data collection and data analysis capabilities. Further enhancement of both the quality and quantity of relevant data in combination with ever more sophisticated analytical competences is a key strategic priority in order to expand the breadth and depth of EIOPA's supervisory tools.

The main tools to ensure a risk-based approach to conduct supervision and to inform the process for setting strategic supervisory priorities are:

Consumer Trends

The annual Consumer Trends Reports provides a snapshot of existing trends in the insurance and pensions markets through quantitative and qualitative exchanges of consumer protection information between EIOPA and NCAs. In addition to NCAs' input, EIOPA also uses other sources of information, such as input from stakeholders (IRSG –

Insurance and Reinsurance Stakeholder Group, OPSG – Occupational Pensions Stakeholder Group, PensionsEurope, Insurance Europe and BEUC – Bureau Européen des Unions de Consommateurs), research papers, and information about trends that is reported in the media.

For the methodology please refer to Annex I of the Consumer Trends Report 2019: https://www.eiopa.europa.eu/sites/default/files/publications/reports/2019.6124-eiopa_consumer-trends-report.pdf

The methodology and procedures for the consumer trends reports are subject to periodic review and due for review in 2021. Where necessary, they will be updated and aligned to the working methods applied in practice. The review will include an assessment of the relevant workflows in order to ensure that they contain adequate steps for management controls and approvals, and the timelines for the different sub-processes.

The work carried out by EIOPA and NCAs in developing and drafting the report, in addition to contributing to reporting on trends, has amongst its objectives the identification of risks for consumers arising from trends in the market, which may require specific policy proposals or supervisory action from EIOPA and/or Member States. This to enable EIOPA to taking a leading role in promoting the fair treatment of consumers and to foster regulation and supervision in a manner that is consistent across the Union by following a risk-based approach.

Cost and Past Performance Report

The annual Cost and Past Performance Reports informs on the net returns paid to consumers in previous years and the cost levels of retail investment products, mainly insurance based investment products (IBIPs) and pension products - personal pension products and IORPs defined contribution schemes. A number of information are analysed using different sources, mainly: ad-hoc data collection, the Solvency II database, the PRIIPs KID data.

For the methodology please refer to Annex I of the 2021 Cost and past performance Report. (*link to be inserted after publication*)

The methodology and procedures for the Cost and past performance report is subjected to periodic review based on the lesson learnt and expertise development along the different iteration of the exercise. The methodology and the presentation of the finding aims also at being coherent and aligning to the ESMA's report on past performance of retail products under its remit.

Risk Heatmap

The Risk Heatmap is a graphical representation of the main risks derived from the risk identification exercises which also support the Consumer Trends Reports. The Risk Heatmap is presented annually in the Consumer Trends Report with the aim of developing into a risk-assessment framework.

The Risk heat-map has been published in 2021 for the first time¹⁰. Over the coming years, it will evolve and the methodology will be updated accordingly.

Retail Risk Indicators

The retail risk indicators are a set of indicators developed by EIOPA, with the purpose of assisting in identifying potential areas of concern. To avoid reporting burden and ask additional data requests, in recent years, these indicators have been mostly based on:

- Solvency II data – which is collected for prudential purposes – for internal analyses and Consumer Trends analyses;
- Product data when this is collected for other purposes.

Rather than pinpointing concrete and specific risks for consumers, they assist in identifying ‘issues of interest’ that might warrant further analysis.

Examples of retail risk (or conduct risk) indicators are: claims ratios, combined ratios, commission levels and lapses/surrender ratios. These indicators aim, for example, to measure profitability (claims and combined ratios), or distribution practices and profitability (commission levels) or consumer mobility (lapses) in relation to certain insurance products and/or distribution practices.

Although some of these indicators are used by several NCAs for prudential supervision purposes, they may also provide valuable information from a consumer protection perspective. For instance, high lapse ratios may indicate, from a prudential supervision perspective, a threat to the financial soundness of an insurance undertaking, but may also reveal conduct of business issues relating to misleading information being provided to consumers, high sales incentives or poor controlling mechanisms of distribution channels.

These indicators contribute to make it possible to:

- Pre-emptively assess the effects of product characteristics and distribution processes on consumer protection; and

¹⁰ <https://www.eiopa.europa.eu/content/consumer-trends-report-2020>

- Determine whether the consumer detriment in question is purely a national problem, or if it is a common problem in several EU countries and hence a coordinated action would be desirable. It is about bringing added value through a European overview of consumer protection risks.

For the methodology, please refer to Annex I of the Consumer Trends Report 2019: https://www.eiopa.europa.eu/sites/default/files/publications/reports/2019.6124-eiopa_consumer-trends-report.pdf

The methodology and procedures for the retail risk indicators are subject to periodic review and due for review in 2021. Where necessary, they will be updated and aligned to the working methods applied in practice. The review will include an assessment of the relevant workflows in order to ensure that they contain adequate steps for management controls and approvals, and the timelines for the different sub-processes.

Thematic Reviews

EIOPA issues thematic reviews on a regular basis. These reviews aim to assess a current or emerging risk and find out what is happening in a specific market. By investigating specific key issues with relevant products and activities in detail, thematic reviews provide guidance and evidence for reasoned policy proposals and consistent supervisory practices.

Thematic reviews have an embedded EU-wide focus. They are intended to be used to investigate issues that go beyond one national market, either because the issues have been identified in several national markets or because they have a cross-border element to them. This facilitates building a coordinated understanding across the markets where issues have been identified and, furthermore, an assessment and “early warning” of the potential for these issues to develop in other Member States.

Topics for thematic reviews are selected from the risks identified in the Risk Heatmap /Consumer Trends report. In particular those risks which need further in-depth analysis are candidates for a thematic review. The topics for thematic reviews are presented to the Board of Supervisors for adoption.

The methodology and procedures for the thematic reviews are subject to periodic review and due for review in 2021. Where necessary, they will be updated and aligned to the working methods applied in practice. The review will include an assessment of the relevant workflows in order to ensure that they contain adequate steps for management controls and approvals, and the timelines for the different sub-processes.

Union-wide strategic supervisory priorities

In line with the new ESA Regulation, namely Art. 29 of the revised EIOPA Regulation, two priorities of Union-wide relevance should be identified.

Supervisory Convergence

A primary strategic priority is the coordination of supervisory actions and facilitation of joint supervisory responses. EIOPA assists NCAs in implementing risk-based conduct of business supervision by fostering a common understanding of conduct risks and developing the associated supervisory practices and tools.

EIOPA coordinates supervisory activities, using a range of tools such as thematic reviews and as relevant mystery shopping exercises, targeting specific conduct risks that can lead to consumer detriment or undermine the functioning of the retail market.

EIOPA also facilitates joint European supervisory responses, as required, to ensure consistent and high levels of consumer protection across the EU, including by issuing relevant guidance, expectations, and warnings as well as by continuing to appropriately identify cases for the use of its product intervention powers and by assisting NCAs in similar tasks.

In addition, EIOPA is both formally and informally asked to mediate in conduct issues with a cross-border dimension. Moreover, EIOPA is asked to issue a legal opinion on the use of national product intervention measures when these are taken.

In view of the significant changes in the EU Regulatory framework applying to conduct, supervisors across the EU now face many common supervisory challenges, often taking novel forms at the national level. This represents an important opportunity for EIOPA to fulfil its convergence mandate in the conduct area, to the benefit of NCAs and ultimately also the insurance and pensions sectors from both the industry and the consumer perspectives.

In the area of conduct supervision, the focus is not on a maximum harmonisation of supervisory approaches, but rather ensuring consistent and fair outcomes for consumers by ensuring supervisory capacities are always proportionate to and effective in regards consumer protection and conduct risks. This is also necessary to ensure a sound level playing field across Member States. In this regard, EIOPA notes that more needs to be done at the national level: across many Member States enhanced supervisory resources focused on conduct issues will be needed if more consistently fair outcomes for consumers are to be achieved. This includes ensuring sufficient resources for effective implementation of the enhanced regulatory framework in the IDD.

EIOPA can help NCAs through the development of a common supervisory tool box and culture that takes into account the specifics of conduct supervision. This includes widespread sharing of supervisory experiences and good practices by NCAs, to support systematic learning from one another. It does not imply that all NCAs use the same tools in the same way, which is not consistent with smart risk-based and preventative supervision. There must be flexibility for supervisory judgement, and for supervisors to react to different markets. However, the goal must be that the same level of consumer protection must be achieved wherever consumers are in the EU.

As stated in the 2018 next steps of the CoB Strategy, EIOPA decided to further augment its work on conduct supervisory convergence through some additional activities. These included:

- EIOPA's involvement in Colleges for conduct matter;
- EIOPA to conduct country visits with NCAs;
- EIOPA to increase its work with NCAs on exchanging practical experiences in conduct supervision;
- EIOPA to undertake an enhanced program of practical exchanges with NCAs, including through bespoke workshops;
- Conduct themes for the EIOPA Supervisory Handbook;
- Conduct Peer Reviews of selected conduct of business topics.

These activities all contribute to the incorporation and systematic integration of conduct aspects into EIOPA's overall annual supervisory convergence work planning, driving the convergence of expectations and outcomes in practice to ensure a sufficiently high level of consumer protection across the whole EU. EIOPA nonetheless considers that the challenges of conduct supervision are sufficiently distinct as to justify specific strategic thinking and allocation of resources focused on conduct issues, as set out in this paper and the CoB Supervision Strategy, and EIOPA will therefore continue to work in parallel on prudential and conduct supervision.

Union Wide Strategic Supervisory Priorities

As an outcome of the ESAs Review, specific amendments to the ESAs Regulations were made effective 1 January 2020. In line with article 29 (a) of the revised EIOPA Regulation, EIOPA shall identify, at least every three years, up to two priorities of Union-wide relevance which shall reflect future developments and trends.

For the upcoming years, EIOPA has identified in the context of Conduct of Business supervision "*Adequate product design, including via a close monitoring of product oversight and governance (POG)*" as one of the two priorities.

Following the revised EIOPA Regulation, NCAs shall take those priorities into account when drawing up their work programmes and shall notify EIOPA accordingly. EIOPA will coordinate the supervisory actions with the NCAs on specific topics with the aim to provide a structured and consistent response to the key risks the European Union and the individual insurance markets are exposed to.

Review of Implementation

In order to ensure a robust and effective implementation of this framework, EIOPA will submit a review of the implementation of the strategy to the Board of Supervisors in Spring 2023.

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