



EIOPA-BoS-18-095
23 April 2018

EIOPA's Strategy for Conduct of Business Supervision – Next Steps

EIOPA's Strategy towards a comprehensive risk-based and preventive framework for conduct of business supervision: Next Steps

1. EIOPA adopted a "Strategy towards a comprehensive risk-based and preventive framework for conduct of business supervision" (CoB Supervision Strategy) in September 2015.¹
2. The CoB Supervision Strategy focused on developing a risk-based and preventative perspective across the EU. It highlighted the following key elements:
 - It emphasised a step-by-step and multi-limbed approach, aimed at incremental improvements over time rather than a 'big bang' approach;
 - It underlined 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 foregrounded a preventative and proactive perspective, rather than one which is more reactive and thereby passive;
 - It identified, specifically, four tools to be developed further by EIOPA (ongoing consumer trends reporting; market monitoring; the use of thematic reviews; and the development of retail risk indicators).
3. EIOPA committed in the CoB Supervision Strategy to take stock of progress after a few years of practical implementation experience. This paper sets out EIOPA's conclusions, and adjustments to the strategy in view of these conclusions.

Progress So Far

4. 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.
5. EIOPA considers that there has been positive progress across all of these tools. In particular:
 - The first full-blown **thematic review**, on monetary relations between asset managers and insurance undertakings in unit-linked business, was completed successfully in 2017, including the publication of an EIOPA Opinion on issues identified.² This followed an earlier successful pilot on

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

²https://eiopa.europa.eu/Publications/Reports/16.%20EIOPA-BoS-17-064-Report_Thematic%20review%20on%20monetary%20incentives%20and%20remuneration.pdf;

mobile phone insurance in 2015.³ The methodology for these has been refined, for instance to streamline data gathering as far as possible and ensure the issues to be assessed are clearly defined. Further refinements can be expected.

- The breadth, completeness, and depth of the **Consumer Trends Report** has been improved year-on-year, and additional elements added, such as including pensions, the inclusion of retail risk indicators derived from prudential data, and additional analysis of specific 'hot topics'.⁴ Further improvements can be expected, including through increasingly robust data collection, the further elaboration of yearly key issues and hot topics, and more sophisticated retail risk indicators.
- The **Retail Risk Indicators** methodology has been steadily developed and, as mentioned, some use of these was included in the 2017 Consumer Trends Report.⁵ They will be developed in future both through the annual Consumer Trends Report, and through their application to specific themes in thematic reviews.
- EIOPA members have committed to the systematic sharing of market intelligence related to potential conduct and consumer protection issues at the earliest possible stages, as a step towards **enhanced market monitoring**. This is alongside national steps on improving market monitoring in view of product intervention powers.

6. EIOPA considers that the progress on these four tools justifies their continued incremental development according to the broad approach set out in the CoB Supervision Strategy already in 2015.

A changing environment

7. EIOPA recognises that there have been some developments that impact the CoB Supervision Strategy.
- 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).⁶ While this was anticipated by the CoB Supervision Strategy, it places a particular emphasis in the upcoming period on ensuring supervisory convergence in respect of these new instruments, and the many practical issues that arise because of their introduction.

<https://eiopa.europa.eu/Publications/Opinions/Opinion%20on%20monetary%20incentives%20and%20remuneration%20between%20providers%20of%20asset%20management%20services%20and%20insurance%20undertakings.pdf>

³ https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-235%20-%20Mobile_Phone_Insurance_Report.pdf

⁴ For 2017: <https://eiopa.europa.eu/Publications/Reports/Sixth%20Consumer%20Trends%20report.pdf>

⁵ https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-260%20-%20Retail_Risks_Indicators_Methodology_Report%20-%20CLEAN%20after%20BoS_update_19-02-2016.pdf

⁶ 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>

- Specific mention may be made of certain new obligations that are contained in the IDD and PRIIPs that related to CoB supervision – the obligations on market monitoring and product intervention. While these were also anticipated by the CoB Supervision Strategy, they underline the critical importance of enhanced market monitoring for EIOPA and for those NCAs with CoB responsibilities for insurers and insurance distribution.
 - 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.⁷ While in its initial construction the emphasis 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.
 - In addition, the potential impact of Brexit has underlined the critical importance of supervisory convergence in practice. This is necessary both to avoid and mitigate potential consumer detriment, and to eliminate regulatory arbitrage leading to an unlevel playing field. Enhancing conduct supervision and its consistency in practice across the EU is likely to be crucial in mitigating consumer risks arising out of Brexit.
8. Taken together, these suggest a renewed emphasis is necessary within the CoB Supervision Strategy on:
- **driving supervisory convergence** in practical CoB supervision, including notably the supervision of the IDD;
 - **further enhancing market monitoring and conduct risk assessment**, to build practical and proportionate supervisory capacities across the EU.

Next steps for the CoB Supervision Strategy

Driving supervisory convergence from the conduct perspective

9. 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.
10. This represents an important opportunity for EIOPA to fulfil its convergence mandate in the conduct area, to the benefit of EIOPA, NCAs and ultimately also the insurance and pensions sectors from both the industry and the consumer perspectives.
11. The relevance of work in this area is heightened by the increased visibility of conduct issues in the years following the financial crisis. While from a prudential perspective much has been and is being done on supervisory convergence, there is further to go and a different starting point in the context

⁷ <https://eiopa.europa.eu/Publications/Administrative/EIOPA%20SPD%202017-2019%20including%20AWP%202018.pdf>

of conduct, where there has been less harmonisation in approach and a less consistent emphasis across Member States.

12. 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.
13. EIOPA also recognises that in the area of conduct supervision, all supervisors, regardless of resources and competencies, face challenges identifying and responding to potential conduct and consumer protection risks. Conduct risks can remain hidden or difficult to identify, and can arise quickly or in unexpected ways. In view of these challenges, 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. Differences in national legal frameworks must be recognised. There must also 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 where ever consumers are in the EU.
14. As a result, and in concrete terms, EIOPA has decided to further augment its work on conduct supervisory convergence through some additional activities. These include:
 - ***EIOPA to begin conduct country visits with NCAs.***
EIOPA will launch a program of 1 and 2 day visits to NCAs in its Members, aimed to look at their conduct supervision approaches. To begin with the topics would draw on the upcoming implementation of the IDD, but would also address such matters as market monitoring and risk based supervision. The aim would be to aid sharing of experiences on practical supervisory challenges, and to provide NCAs with additional perspectives on practical tools and solutions drawn from approaches in other jurisdictions.
 - ***EIOPA to increase its work with NCAs on exchanging practical experiences in conduct supervision.***
EIOPA will undertake an enhanced program of practical exchanges with NCAs, including through bespoke workshops. The subject matters of further workshops (a minimum of three in 2018, and on a rolling program)

would address such topics as the use of data in identifying potential consumer detriment; ways of assessing conduct risk and prioritising areas of interest; experiences with supervision of intermediaries; practical supervision of principles-based regulation in the conduct area; follow ups on thematic reviews.

- ***Preparation for work on Conduct themes for the EIOPA Supervisory Handbook.***

EIOPA will begin preparing for integrating conduct themes into its Supervisory Handbook. EIOPA will already prepare a 'Conduct Risk Through the Lifecycle' Report for Q3. This Report is expected to provide a useful starting point for future conduct supervisory handbook work. Areas of focus could include similar topics to those to be addressed through EIOPA's enhanced practical exchanges.

15. These are preparatory 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. See EIOPA's Supervisory Convergence Plan 2018-19 [here](#). 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.

Further enhancing market monitoring and conduct risk assessment

16. 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.
17. 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. There are no regulatory or supervisory 'magic bullets' that can fully resolve these challenges. **This places a strong emphasis on ongoing practical supervisory capacity, including in depth understanding of business models from a conduct perspective.**
18. 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.

19. From EIOPA's perspective, the steady improvements to the Consumer Trends Report, the development of the RRI and a focus on sharing 'early warning signals', and the use of thematic reviews on specific issues, are, from an incremental standpoint, a pragmatic way to start to address these challenges by aiding in establishing an overall view of conduct risks and where they are concentrating.
20. **Thematic reviews** in particular, by addressing data and market intelligence and assessment gaps head on, offer a **key diagnostic supervisory tool** for conduct supervision, so long as they can be conducted with sufficient efficiency and timeliness. (A full review can take a year or longer to complete, yet diagnostic reviews might be undertaken on a faster cadence). EIOPA-led thematic reviews can also be developed in the future to include coordinated thematic supervisory action with firms at the national level.
21. EIOPA considers however that future progress on data and analytic capacity regarding conduct risks at both the national and EU levels remains necessary, irrespective of the increased use of thematic reviews. This is critical for ensuring resources for in depth assessment are appropriately used, and as a foundation for risk-based and proportionate supervision at the national level.
22. EIOPA has also started work therefore to build expertise on conduct risk assessment, for instance by launching a specific **workstream** of NCAs to collect together **product and market conduct experts** from across the Union. This will support EIOPA's assessment capacity in view of market monitoring, product intervention and broader conduct supervision work, and aid NCAs in building resources and capacity of a similar kind at the national level.
 - The workstream will contribute to any upcoming product intervention issues.
 - The workstream would also contribute to a development of the conduct 'toolbox' needed for undertaking conduct risk assessments and considering the effectiveness of different supervisory actions.
 - It can be expected to lay the basis for more systematic ongoing conduct risk reporting.
23. In addition, EIOPA's ongoing work on **mapping conduct risk throughout the product lifecycle** is identifying the different mechanisms by which conduct risk can arise and be identified and, ultimately, assessed or measured, for different products and business models and distribution channels, looking throughout product and service lifecycles.
24. Ultimately, this work will lay a basis for developing a more consistent view across NCAs and EIOPA on practical risk-based and preventative conduct of business supervision, on the key data and market intelligence needed for this, and the supervisory expertise and resources that have to be brought to bear. It will enable greater transparency on conduct risks and where they are arising, both amongst supervisors and towards the market.

25. The strategy is a multi-pronged and incremental one, moving towards increasing convergence in access to and use of conduct data and market intelligence for supervisory purposes. EIOPA will increasingly integrate conduct aspects into existing data tools, and as a long term objective, EIOPA will work towards the establishment of a conduct reporting and risk assessment framework. However, data analytics can never take the place of supervisory judgement, so improving available data and market intelligence must go hand-in-hand with improving the capacity of conduct supervisors to act in practice on data and intelligence in a proportionate and preventative manner.
26. The approach should be adapted and developed always from the perspective of its capacity in practice to deliver better outcomes for EU citizens.

Summary of actions

Action	Timing
Further development of existing tools (Thematic Reviews, Consumer Trends, Retail Risk Indicators, and enhanced market monitoring)	Ongoing
Launch conduct country visits	Three in 2018; expand in 2019+
Start work on conduct specific aspects of supervisory handbook	Preparatory in 2018; start in 2019 on first chapter(s)
Integrated conduct into EIOPA's supervisory convergence plan	From 2018 onwards
Enhance and enable further exchanges amongst NCAs on practical conduct supervision	Starting in 2018 with number of NCA workshops
Further improve market monitoring and proportionate use of data for risk-based and preventative supervision	Start work in 2018 through a new Products and Markets workstream