FinCoNet

INTERNATIONAL FINANCIAL CONSUMER PROTECTION ORGANISATION

Financial Product Governance and Culture

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Acknowledgements

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Disclaimer

This report is based on information and responses gathered from members of FinCoNet and the G20/OECD Task Force on Financial Consumer Protection between 14 December 2018 and 31 January 2019. While the information was accurate and up-to-date at the time of collection, subsequent changes in circumstances and practices may render some information out-of-date.

The opinions expressed and arguments employed herein do not necessarily reflect the official views of FinCoNet or Task Force member organisations.

About FinCoNet and the G20/OECD Task Force on Financial Consumer Protection

In November 2013, FinCoNet was formally established as a new international organisation of supervisory authorities that are responsible for financial consumer protection. FinCoNet is recognised by the Financial Stability Board and the G20.

The goal of FinCoNet is to promote sound market conduct and enhance financial consumer protection through efficient and effective financial market conduct supervision, with a focus on banking and credit.

FinCoNet members see the organisation as a valuable forum for sharing information on supervisory tools and best practices for consumer protection regulators in financial services. By sharing best practices and by promoting fair and transparent market practices, FinCoNet aims to strengthen consumer confidence and reduce systemic consumer risk.

The G20/OECD Task Force on Financial Consumer Protection brings together policy makers, public authorities and International Organisations. The Task Force is engaged in supporting the implementation and development of the G20/OECD High-level Principles on Financial Consumer Protection. The principles are the leading international standard for effective financial consumer protection frameworks, and addresses issues such as disclosure and transparency, fair treatment of consumers, responsible business conduct of financial services providers and their authorised agents, and complaints handling and redress.

Table of Contents

Figures

Table of acronyms and abbreviations

AFM	Dutch Authority for Finanical Markets
ASIC	Australian Securities and Investments Commission
BCB	Central Bank of Brazil
CGAP	Consultative Group to Assist the Poor
CMN	Conselho Monetário Nacional (National Monetary Council Brazil)
EBA	European Banking Authority
FCA	Financial Conduct Authority (United Kingdom)
FinCoNet	International Financial Consumer Protection Organisation
G20	Group of Twenty
G30	Group of Thirty
HKMA	Hong Kong Monetary Authority
MiFID	Markets in Financial Instruments Directive
NPAP	new product approval policy
OECD	Organisation for Economic Co-operation and Development
SBS	Superintendence of Banks, Insurers and Private Pension Funds (Peru)
SMCR	Senior Managers and Certification Regime
SC6	Standing Committee 6
STHCC	short-term high-cost credit
Task Force	G20/OECD Task Force on Financial Consumer Protection

Glossary

Term	Definition
Banking deposit products	Amount of money placed into a bank account. The account holder has the right to withdraw the deposited funds, as set forth in the terms and conditions governing the account agreement.
Banking products	For the purposes of this report, consumer credit products, payment products and banking deposit products.
Consumers	Individuals acting for personal, domestic or household purposes, not business or professional purposes.
Consumer credit	Credit provided to individuals for personal, domestic or household purposes, not business or professional purposes. This includes both secured credit (such as mortgage loans and personal loans) and unsecured credit (such as personal loans, lines of credit, credit cards, overdraft facilities and payday lending).
Distributor	A person or entity who offers and/or sells the product to consumers. This includes intermediaries and business units of financial product providers that are not involved in designing the product but are responsible for bringing the product to the market.
Financial product governance	The procedures and controls in place to design, approve, market and manage retail financial products through their life cycle to ensure that they meet, at any time, the interests and objectives of consumers and the relevant regulatory requirements.
Financial product governance requirements	The legal/regulatory and/or supervisory requirements on an entity to implement financial product governance.
Financial product provider	An organisation that offers financial products to consumers.
Financial product intervention power	A power enabling a regulator/supervisor to intervene in the design, sale and/or distribution of a financial product including power(s) to approve a financial product, require modifications or require a financial product to be suspended or withdrawn from sale.
Firm	For the purposes of this report, a financial services firm (including a financial, credit or banking institution).
Guidelines	Instructions issued by a supervisory authority to be adopted by financial institutions according to existing legislation and regulation.

Jurisdiction	The territory over which the respondent's authority is exercised.
Payment products	Instruments, banking processes or services which enable the transfer of funds from a payer to a payee.
Product governance	For the purposes of this report, governance of financial products.
Product life cycle	A number of stages products go through from research, design, manufacture and distribution/sales and ultimately to the product's decline or removal from the market.
Supervisor	For the purposes of this report, a supervisory authority.
Supervisory approaches and practices	Instruments, procedures and devices used by supervisors to ensure that the supervised entities comply with the applicable regulation and best practices (for example reporting of information, complaints handling, on-site inspections and mystery shopping). The same tool can be implemented and used differently, according to each supervisory authority's practice.
Target market	Group of end consumers for whom the product is designed.

Executive summary

Good culture and consumer outcome focused decision making in firms contributes to the provision of financial products that meet the needs, interests and objectives of consumers. Product governance through the product life cycle is a significant focus for policy makers seeking to provide a framework for consumer centric systems, processes and outcomes. On the other hand, poor culture and misconduct in financial firms often derive from a lack of focus on the consumer and can result in consumer detriment and undermine trust and stability in the financial system.

This report from FinCoNet in conjunction with the G20/OECD Task Force on Financial Consumer Protection presents findings on product governance and culture in relation to banking products. The report is based on 29 responses collected from 25 participating jurisdictions and provides information on policy development in this area, the use of product governance tools by supervisors and the importance of firm culture to motivate consumer focused outcomes. The report includes examples and case studies to illustrate various approaches outlined in the report.

The report and accompanying literature review, published as a companion document, identify a strong link between good organisational culture and product governance. Culture in financial services firms refers to the shared values and norms that drive behaviours and decision making within the organisation. While culture is challenging to measure, product governance frameworks provide for systems, controls and process for consumer-centric decision making and a means to monitor drivers of good culture.

Nearly all respondents have statutory product governance requirements for banking products in their jurisdiction, requiring internal control systems in firms, governing strategies for product design and methods used to reach the market. Respondents frequently use suitability requirements, including target market definitions, to necessitate the consideration of consumer needs, objectives and constraints. Other approaches include the oversight of firms' internal procedures for product approvals and/or requiring firms test banking products before they are launched.

Product governance usually applies to all distribution channels, although critically in some jurisdictions, product governance requirements do not apply to newer electronic means of distribution. In a context of accelerated digital innovation, this should be a focus for policy makers.

Risks for consumers associated with poor product design and inappropriate product distribution were examined for different banking products. For credit products, risks identified were consumer affordability and the suitability of products or specific product features. Product governance is important to mitigate risks associated with product design, such as fee structures, and are used in combination with other regulatory requirements, including individual suitability assessments. Few respondents reported using product governance provisions to provide protections for specific vulnerable consumers groups, such as the elderly.

Approaches used by supervisory authorities to detect and enforce failures of product governance include the use of consumer complaint information, inspections, market monitoring and data reporting. Complaints monitoring is important to ensure product assessments are robust and consumers' needs are met. Most respondents reported that they have enforcement and sanctioning powers.

Policy makers and supervisors around the world are implementing a variety of product governance tools to drive consumer-centric product design and sales of banking products. Future reviews of the effectiveness of these various frameworks will inform refinements to product governance approaches and tools, particularly in relation to distribution.

Further, defining good culture in financial firms and working to identify measures of drivers of good and poor culture will assist to better achieve consumer focused decision making in financial firms and in turn promote confidence in financial firms and their products.

1. Introduction and purpose of report

FinCoNet established Standing Committee 6 (SC6) to examine globally financial product governance and culture in relation to banking products, in collaboration with the G20/OECD Task Force on Financial Consumer Protection. In examining these topics, SC6 considered consumer harms, policy and supervisory approaches, challenges for regulators and supervisory authorities, and the impact of organisational culture on product governance within the financial services industry.

The purpose of this report is to provide an overview of the key findings and themes derived from information provided by FinCoNet and Task Force members in response to a survey. Ultimately, the objectives are to share information and allow jurisdictions to benefit from the experiences of each other, and to improve financial consumer protection policy, regulation and supervisory approaches.

Case studies are provided throughout the report to illustrate various approaches.

1.1 What is financial product governance and why is culture important?

Governance of financial products (product governance) refers to the systems, procedures and controls in place in a firm to design, approve, distribute and assess financial products. Product governance and firm culture are a focus for policy makers and oversight authorities as they consider approaches to financial consumer protection that can supplement traditional compliance-based requirements.

Good product governance and culture should result in the sale of financial products that take the needs, interests, objectives and characteristics of consumers into account and that are distributed through appropriate channels.

Culture in financial services organisations directly affects consumer outcomes and the functional operation of the market. Identifying and driving "good culture" in firms is an important consideration for regulators and supervisors when making decisions about product governance.

Recently, new strategies that widen the regulatory focus from the point of sale to include the entire product life cycle have been developed in some jurisdictions and are under consideration in others. An important part of these developments is increased regulatory attention to the design of financial products. Explicit measures to regulate the governance of financial products have been introduced in several jurisdictions. They include measures giving regulators and supervisors the power to intervene in certain circumstances.

Regulators and supervisors need to understand the processes involved in designing, manufacturing and marketing retail financial products, as the application of appropriate standards for product governance can help to support a "consumer first" culture among financial product providers.

1.2 Methodology

SC6 distributed a survey in December 2018 to gather information about policy developments and supervisory approaches (in place and/or under consideration) in relation to product governance and culture across different jurisdictions.

The survey also gathered information about relevant practices, tools and mechanisms used by regulators and supervisors to promote consumer-focused sales practices and mitigate risks relating to poor product design and sales practices.

SC6 received 29 responses to the survey from members of FinCoNet and the G20/OECD Task Force on Financial Consumer Protection, together providing information from 25 jurisdictions around the world. A list of responding jurisdictions is at Annex A, and a copy of the survey can be found at Annex B.

Please note that in this report we have referred to "respondents" rather than jurisdictions in the figures. Not all respondents answered each question.

To support this research, a literature review was conducted, drawing on the findings of research reports and other literature that examine the impact organisational culture can have on consumer outcomes. The literature review is available as Annex C to this report and is published as a companion document.

2. Legal and regulatory frameworks

This chapter outlines the financial product governance requirements in place or under consideration in various jurisdictions.

The questions analysed in this chapter first focused on product governance requirements generally (i.e. requirements applicable to all financial products), to provide an understanding of the broad policy and legal framework. Following this, the questionnaire focused on banking products (i.e. consumer credit products, payment products and bank deposit products), as they are the focus of this report.

2.1 Overview

Key points

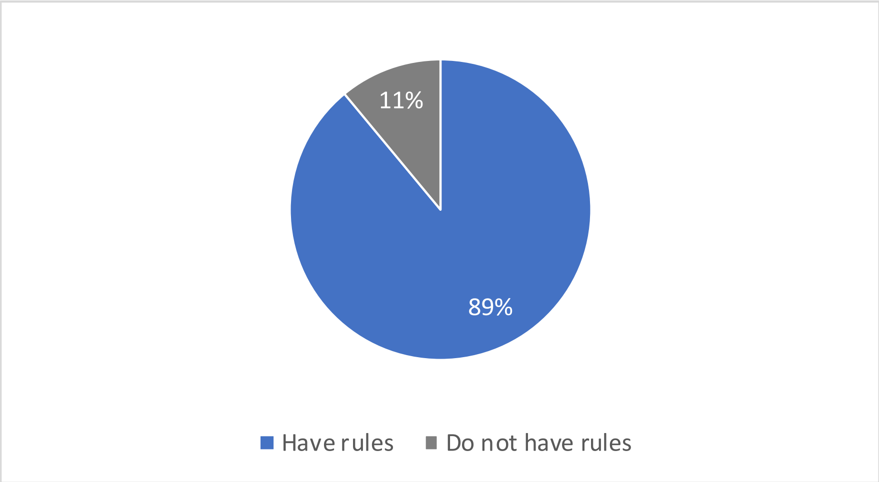
- The purpose of product governance frameworks is to ensure financial products are designed and sold in a way that meets consumer needs, objectives and constraints. This in turn prevents consumer harm and ensures that consumers are treated fairly.
- The vast majority of respondents have product governance rules or legislation for financial products, including banking products.

Most respondents have rules in place focusing on relationships between firms and consumers to ensure the fair treatment of consumers and that a range of financial products are suitable for each consumer.

Financial product governance refers to the frameworks used to identify whether financial products are fair to and suitable for the consumer. Many of these frameworks require product providers to identify a target market to ensure consumers are recommended products that are appropriate for their needs.

The survey results show that all but a few respondents require firms to have processes in place to ensure products are suitable for the consumers they are marketed to, and to assess the associated risks for consumers (see Figure 1).

Figure 1. Proportion of respondents with product governance rules for products generally

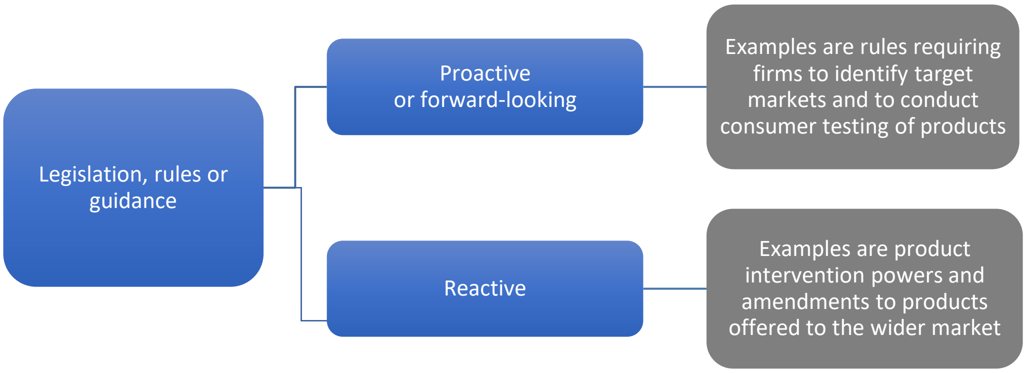


Generally, there are oversight and supervision policies in place for banking and credit products as well as broader financial products such as securities products. A smaller number of respondents have relevant policies that govern insurance products.

The respondents that have legislation, rules or guidance in place for product governance reported using both proactive measures and reactive measures (see Figure 2). While these two approaches are different, their purpose is the same: to protect consumers from experiencing detriment as a result of conduct failures.

It is also important that information is provided to ensure consumers understand the product (e.g. its fees, obligations and terms) and can choose between competing products.

Figure 2. Proactive and reactive measures



Case Studies

Brazil

Product governance principles promote the fair treatment of consumers. Fair treatment must be observed when establishing institutional policies regarding relationships with customers and users of products and services (Resolution CMN 4,539, of 2016).

Financial institutions must ensure adequacy of products and services offered to clients and provision of information necessary for decision-making by clients and users, including rights, obligations, responsibilities, costs and charges, penalties and risks (Resolution CMN 3,694 of 2009).

European Union

In the European Union, the European Banking Authority (EBA) has issued the Guidelines on Product Oversight and Governance Arrangements for Retail Banking Products for manufacturers and distributors of retail banking products including mortgages, personal loans, deposits, payment accounts, payment services and electronic money products.[1] The Guidelines, which came into force in January 2017, provide a framework for robust and responsible product design and distribution by manufacturers and distributors.

The first part of the Guidelines consists of requirements for manufacturers. These relate to internal control functions, the identification of the target market, product testing, disclosure, product monitoring, remedial actions and distribution channels.

The manufacturer should establish, implement and review effective product oversight and governance arrangements. The arrangements should aim, when products are being designed and brought to the market, to ensure that the interests, objectives and characteristics of consumers are taken into account, to avoid potential consumer detriment and to minimise conflicts of interest (guideline 1.1).

The second part of the Guidelines consists of requirements for distributors. These relate to the distributor's governance, the identification and knowledge of the target market and information requirements.

The EBA has published two reports on the implementation of the Guidelines: the EBA First Report[2] and the EBA Second Report.[3]

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[1] European Banking Authority, Guidelines on Product Oversight and Governance Arrangements for Retail Banking Products (EBA/GL/2015/18) March 2016.

[2] European Banking Authority, *EBA report on the application of the Guidelines on Product Oversight and Governance (POG) Arrangements (EBA/GL/2015/18)*, July 2019 (EBA First Report).

[3] European Banking Authority, *EBA report on the application of the Guidelines on the Product Oversight and Governance (POG) Arrangements (EBA/GL/2015/18)*,(EBA/REP/2020/28), November 2020 (EBA Second Report).

2.2 Development of requirements for product governance

Key points

- Consumer detriment can be mitigated using product oversight requirements to manage the design and distribution of products over their life cycle.
- Adequate disclosure of information to promote informed decision making remains important, however, complementary requirements are being implemented to ensure product manufacturers design and distribute products to meet consumer needs and to reduce consumer detriment.

Focus on product governance

Product governance is a focus area for policy makers and legislators across the world. Respondents that do not have product governance rules or legislation in place reported that such laws are currently being developed or are under consideration. Respondents that do have such provisions in place are considering additional requirements to drive a consumer-focused culture.

Case studies

Australia

Product governance obligations in Australia are intended to help consumers obtain appropriate financial products by requiring a consumer-centric approach to product design and distribution. In particular:

- issuers must design financial products that are likely to be consistent with the likely objectives, financial situation and needs of the consumers for whom they are intended;
- issuers and distributers must take 'reasonable steps' that are reasonably likely to result in financial products reaching consumers in the defined target market; and
- issuers must monitor consumer outcomes and review products to ensure that consumers are receiving products that are likely to be consistent with their likely objectives, financial situation and needs.

The requirements are recognition that there are limits on the effectiveness of disclosure as a tool for achieving good consumer outcomes. These obligations commence on 5 October 2021.

Israel

The Bank of Israel's Banking Supervision Department and the Capital Market, Insurance and Savings Authority are drafting a directive to regulate short-term credit products to protect consumers.

It will include requirements such as characterising the target audience for proactive marketing and adapting credit products to the customer's characteristics and needs.

Policy rationale and objectives

Respondents with product governance legislation highlighted that the rationales of policies around product governance are consumer protection and ensuring a consumer-centric environment for the provision of financial products. These policies aim to ensure consumers are treated fairly and to mitigate risks of mis-selling.

Legislation and rules address the processes that manage design and distribution of products to the market through the product life cycle to ensure consumers are effectively protected, market integrity is maintained, sound business practices are promoted, risks associated with mis-selling are mitigated, and financial stability is promoted and maintained.

Consumer outcomes approaches are emerging as a promising consumer protection paradigm, shifting the regulatory focus from compliance with prescriptive rules to customer results or outcomes. This shift is highly relevant to emerging markets, where people are targeted with a range of digital financial services that may expose them to new risks, and vulnerable customers are disproportionately affected by global crises.[4]

Disclosure of product information is also important in helping consumers make informed decisions about products and reducing consumer detriment, however, disclosure alone has not been effective in preventing poor consumer outcomes. The uptake of product governance requirements indicates a shift of responsibility for the appropriateness of products and consumer outcomes from the consumer to the product manufacturer and distributor.

2.3 Requirements for banking products in particular

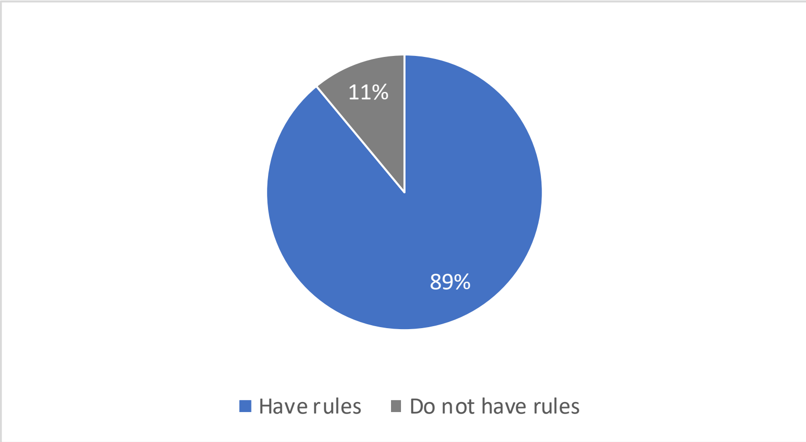
Key point

- Most respondents have product governance requirements specifically for banking products.

Most respondents have product governance requirements specifically for banking products to ensure they are designed and distributed in a way that is consumer focused (see Figure 3).

[4] Consultative Group to Assist the Poor (CGAP), Making Consumer Protection Regulation More Customer Centric, June 2020, p.3.

Figure 3. Proportion of respondents with product governance rules for banking products



The main goal of the requirements is to provide consumer protection before the point of sale – that is, in the early stages of product design, risk management and advertising.

It is key for product providers to gather consumer insights[5] and analyse information on the characteristics and constraints of consumers in order to properly identify a target market and design products accordingly. To ensure that products adequately align with the consumer's needs, objectives and constraints, there are requirements that products costs, risks and objectives are designed in a way that is consistent with the target market. Consumer requirements should be considered before products are distributed. Whether the products are being appropriately designed and distributed should be reviewed over the product life cycle.

Consumer harm could be caused by deficiencies in risk management frameworks associated with product governance (e.g. internal and external fraud, poor sales practices, and inadequate business practices).

In many cases, governance requirements specific to banking products include requirements that specific information is provided to customers about the product (e.g. risks, obligations, rights, responsibilities, costs and charges) so that they can make an informed decision.

[5] CGAP, Making Consumer Protection Regulation More Customer Centric, p.19.

3. Product governance tools for good consumer outcomes

Product governance is an emerging consumer protection approach focusing on consumer outcomes. This chapter discusses various product governance requirements that have been implemented by the respondents for banking products to drive good consumer outcomes.

3.1 Suitability requirements and target market definitions

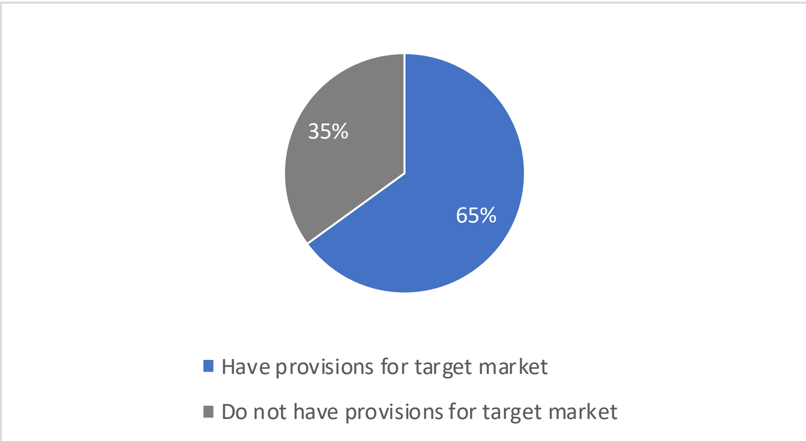
Key points

- Suitability requirements, including obligations to design a product for a defined target market, are intended to drive good consumer outcomes.
- About two-thirds of respondents have legal frameworks requiring a target market definition for the purposes of product governance.
- When defining the target market, firms are generally required to consider the needs, financial situation, interests, objectives and/or characteristics of consumers. Various factors are taken into account, linked to the consumer and/or the product.

Product governance rules are intended to help consumers obtain appropriate products by placing requirements on manufacturers and distributors.

About two-thirds of respondents require products to be designed to adequately meet the needs, financial situation, interests, objectives and/or characteristics of a defined target market to avoid potential consumer detriment (see Figure 4).

Figure 4. Proportion of respondents with provisions for the target market for banking products

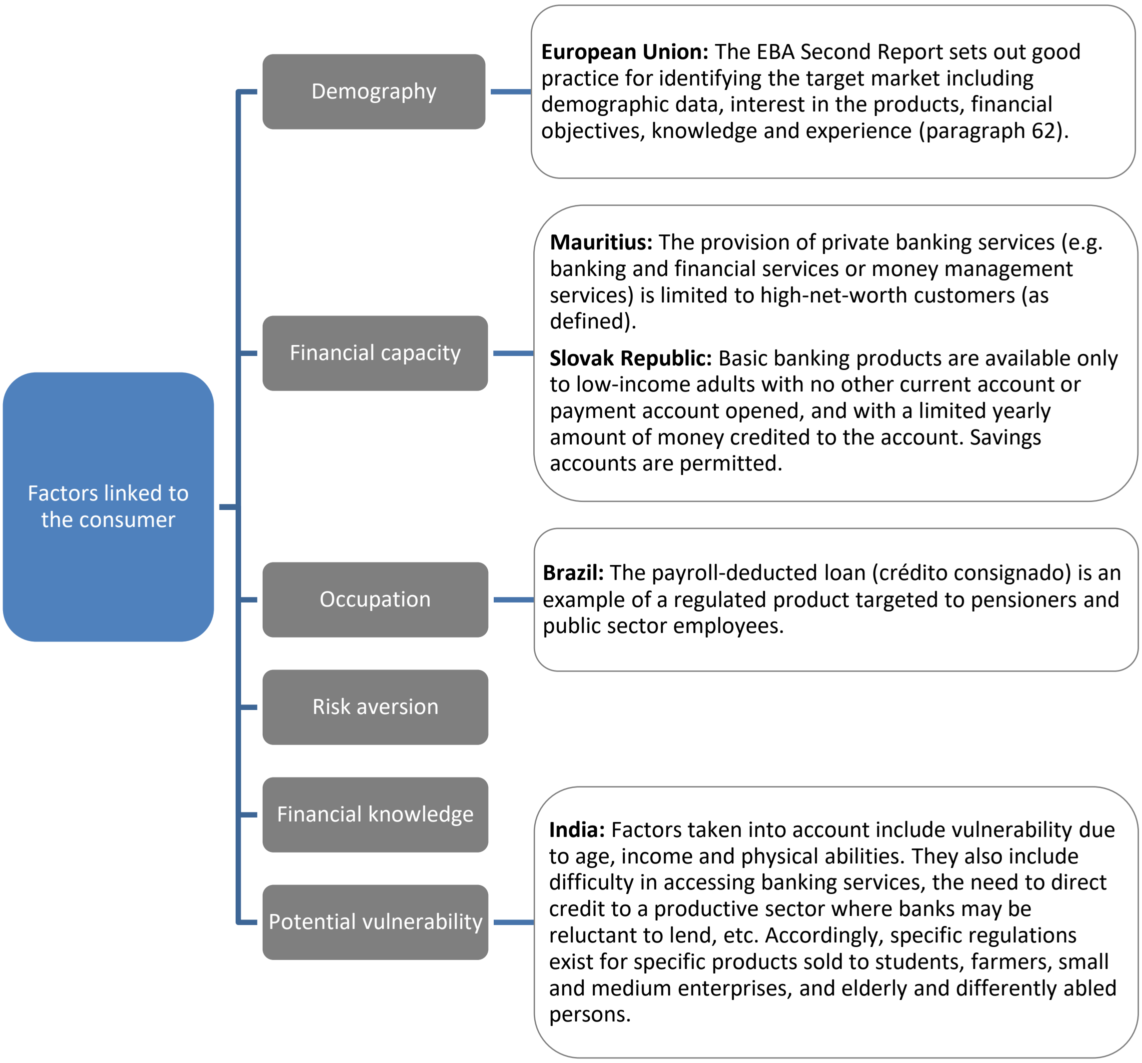


In jurisdictions where there are provisions about the target market of a banking product, several factors may be used to define the target market. These can be categorised as either factors relating to the consumer or factors relating to the product.

Consumer factors

Factors linked to the consumer are set out in Figure 5.

Figure 5. Consumer factors



Product factors

Factors linked to the product are set out in Figure 6.

Figure 6. Product factors

Factors linked to the product

Product risk level

China: The Guidelines on Strengthening the Protection of Financial Consumers' Rights and Interests, the Guidelines on Protecting Financial Consumers' Rights in the Banking Sector and other consumer protection rules require banks to assess and classify product risk. The risk preference, perception and tolerance of consumers should be tested before sale to ensure that proper products and services are provided to the right person.

Japan: The Act on the Provision of Financial Services provides for appropriateness of product sales by requiring providers to consider the risk that consumers will incur a loss of principal, and possible causes of such a loss (e.g. fluctuations in interest rates, currency values, market quotations or other indicators, and changes in the status of the providers' business or property).

Product complexity level

Generally, when defining the target market, firms ensure the products offered are adequate to meet the needs, interests and objectives of the consumer.

Brazil: The Central Bank of Brazil requires financial institutions to set and publicise the target groups of products and services in their portfolio (Resolution 4,539 of 2016). It also requires adequacy of the products and services offered or recommended to meet the needs, interests and objectives of consumers and users (Resolution 3,694 of 2009).

Canada: The Sound Commercial Practices Guideline outlines expectations for best practices relating to the target market of a product, e.g. (1) identify consumer groups for whom products are likely to be suitable, and limit access by consumers to products likely to be unsuitable; (2) use distribution methods tailored to the products and target consumers (i.e. methods that take into account the need for advice and disclosure and what potential impact the product can have on consumers' financial situations); (3) use appropriate information to assess the needs of various consumer groups; and (4) evaluate the risks inherent in new products, in conjunction with environmental factors (economic, legal and market) that could harm consumers.

Europe: The EBA Guidelines on Product Oversight and Governance stipulate that the manufacturer should only design and bring to market products with features, charges and risks that meet the interests, objectives and characteristics of and benefit the target market identified for the product (guideline 3.3). In its First Report, the EBA states that it "considers it good practice for the assessment to vary depending on the risk borne by the customer and the degree of complexity and the nature and characteristics of the product".

The Second Report specifies that consideration should be given to the minimum level of consumer knowledge and experience required to understand the product and related purposes. The Second Report also addresses innovation, for example, when targeting a broad target market and developing existing products, manufacturers should consider groups of consumers who lack financial literacy and technology expertise to prevent financial exclusion.

The consideration of whether a consumer is within the target market is usually an objective assessment. In most jurisdictions a financial product should not be offered to the consumer solely on the basis that the consumer is within the target market.

Some jurisdictions also make it clear that product manufacturers or distributors should not be prevented from providing a product to a consumer outside the target market. In some cases, the consumer must be provided with an adequate explanation or personalised advice about the product.

Consumer outcomes

Most respondents reported that their product governance requirements are designed to produce good consumer outcomes, but do not set out specific consumer outcomes that financial products must deliver.

Consultative Group to Assist the Poor (CGAP) have identified six core types of consumer outcomes that are commonly discussed: suitability and appropriateness, choice, safety and security, fairness and respect, voice and meets purpose.[6]

Future studies could consider to what extent consumer outcomes assessments extend beyond financial outcomes and include the wider impact on society.

Case studies

Brazil

Financial sector regulators do not normally take part in the supervised entity's internal discussions and/or processes related to product development (e.g. setting out specific consumer outcomes that financial products should deliver).

However, for initiatives relating to banking products such as *crédito consignado* which are regulated by specific non-financial government agencies, product features for expected consumer outcomes are defined or modified by law.

European Union

Guideline 3.3 of the EBA Guidelines on Product Oversight and Governance provides that the manufacturer should only design and bring to the market products with features, charges and risks that meet the interests, objectives and characteristics of the target market identified for the product (and are of benefit to the target market identified for the product).

While it is generally agreed that the notion of benefit did not equate to value for money, given the broader nature of benefit, it is worth noting that the EBA Guidelines do not provide for a definition of "benefit"; however, in its first report on Product Oversight and Governance, the EBA has noted that, when identifying whether a new or significantly changed product would be beneficial to consumers, manufacturers should consider aspects such as the cost, the added value of the product, whether the product does what it is meant to do and whether the product is unnecessarily complex.

The Guidelines also provide that product governance requirements should ensure that consumer detriment is avoided and that conflicts of interests are minimised. Manufacturers

[6] CGAP, Making Consumer Protection Regulation More Customer Centric, p.8.

should make appropriate product changes where scenario analysis yields poor results for the target market.

Peru

The regulatory framework for market conduct places four general requirements on financial institutions:

- Product design must comply with consumer rights, laws and regulations, approved policies and procedures related to market conduct.
- Commercialisation mechanisms must not mislead consumers regarding product terms and conditions.
- Both parties must comply with contractual obligations.
- User requirements should be reasonably related to the characteristics and nature of the products and services offered and contracted.

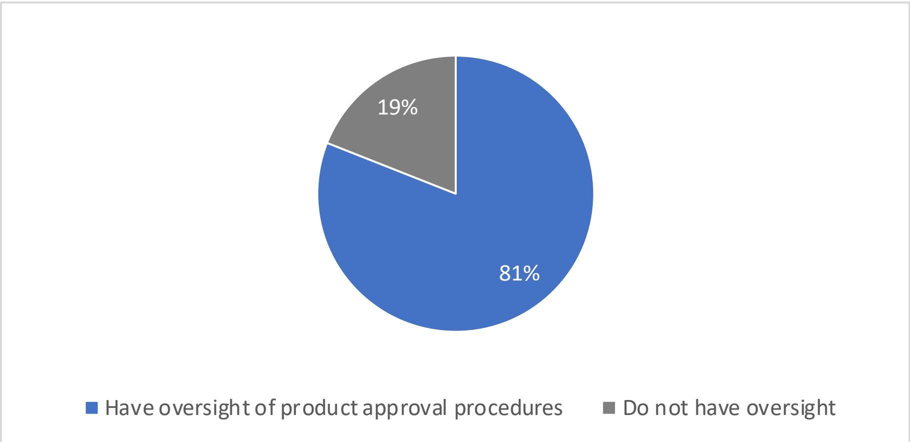
3.2 Internal approval procedures

Key point

- Four in five respondent jurisdictions have provisions relating to the oversight of internal product approval of banking products, including requirements that products are periodically reviewed by firms.

Most respondents have oversight of firms' internal procedures for product approval (see Figure 7).

Figure 7. Proportion of respondents with oversight of internal approval procedures for banking products



Many jurisdictions have governance requirements that aim to promote best practices in product approval procedures (e.g. approval of new products and changes to existing products). There are supervisory requirements for the design, pricing, contract language, manufacture, approval and marketing of banking products. These best practice requirements aim to ensure that products are designed and distributed in a consumer-centric way and have longevity on the market.

In some jurisdictions, regulators and firms are co-responsible for design, distribution and maintenance of financial products through the product life cycle.

Case studies

European Union

Procedures set according to the EBA Guidelines on Product Oversight and Governance complement banking institution's new product approval policy (NPAP) required under the prudential regulatory framework. NPAP procedures shall be followed in the approval of business decisions concerning the development of new markets, products and services, and significant changes to existing ones, as well as exceptional transactions. The policy should in addition encompass material changes to related processes (e.g. new outsourcing arrangements) and systems (e.g. IT change processes). The NPAP should ensure that approved products and changes are consistent with the risk strategy and risk appetite of the institution and the corresponding limits, or that necessary revisions are made.

In its first report on Product Oversight and Governance, the EBA noted that for several manufacturers, the product governance process seemed to be linked to the NPAP required under the Capital Requirements Directive and the EBA Guidelines on Internal Governance, while, in other cases, it appeared to be separate (depending on the type of product and the regulation it derives from) and to run in parallel with the approval process set up to meet prudential and commercial objectives. The EBA noted that there may be merit in having one process to cover both, as this enables the manufacturer to consider any new product as a whole, facilitating decision-making based on all aspects, including the needs of and outcomes for consumers. [7]

Israel

The Bank of Israel's Directive 310, on risk management, requires banks to have written policies and procedures for banking products. Special procedures are required for new products including:

- prior approval from the board of directors;
- an assessment of the risks inherent in a new product and their effect on the risk profile; and
- involvement of all relevant functions in the NPAP, including managers in risk management, legal, compliance, accounting, IT, information security, business line and internal audit.

Some regulatory bodies require firms to periodically review products. This review is done through the firm's internal control system and/or internal compliance team to ensure adequacy and effectiveness in addressing potential product risks.

[7] EBA, *EBA report on the application of the Guidelines on Product Oversight and Governance (POG) Arrangements (EBA/GL/2015/18)*, July 2019 (EBA First Report), paragraph 32.

Case studies

Hong Kong

The Supervisory Policy Manual of the Hong Kong Monetary Authority requires banks to have an effective mechanism in place to ensure that all products and services launched are subject to proper assessment and approval procedures. There should be an internally approved and clearly documented NPAP addressing not only the development and approval of entirely new products and services but also significant changes to features or the risk profile of existing products and services (module IC-1 "Risk management framework").

Italy

National provisions issued by the Bank of Italy require financial institutions to establish internal procedures on product oversight and governance. Procedures must be:

- consistent with the institution's NPAP, in accordance with the provisions on the internal control system;
- approved and periodically reviewed by the management body in its supervisory function; and
- periodically assessed to verify their adequacy and effectiveness.

The assessment is carried out with the involvement of the internal control functions, which report directly to the management body.

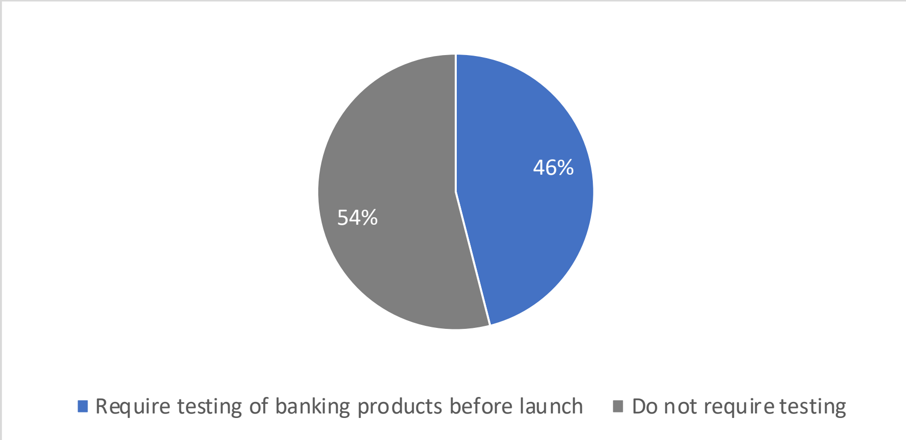
3.3 Product testing and monitoring

Key points

- Just under half the respondents require product testing before a banking product is launched on the market. The scope of product testing may depend on the product type, complexity and risk.
- Some respondents highlighted that the manufacturer typically conducts product testing before launch to assess the impact of the product on the consumer.

Just under half the respondents require firms to test a banking product before launch (see Figure 8). In some other jurisdictions the manufacturer might voluntarily conduct product testing to assess the impact of the product on the consumer before launching the product.

Figure 8. Proportion of respondents requiring firms to test banking products before launch



Where product testing is required, firms run scenario analyses, including stressed scenarios. The principle of proportionality generally applies to product testing: the scope of the analysis may depend on the type, complexity and risk level of the product. For example, for a simple product (e.g. an ordinary savings account), a scenario analysis may not be required.

Certain respondents noted that a specific methodology is often established for testing products in certain types of situation (e.g. deteriorating market conditions, or financial difficulties being experienced by the product provider).

Case studies

Brazil

Regulators may, through informal discussion with the market, encourage testing of financial products on a smaller scale before a larger and riskier market launch.

European Union

The EBA Guidelines on Product Oversight and Governance state that "before a product is brought to the market; an existing product is sold to a new target market; or significant change is made to an existing product, the manufacturer should conduct product testing, in order to be able to assess how the product would affect its consumers under a wide range of scenarios, including stressed scenarios. Manufacturers should make appropriate product changes where the scenario analysis gives rise to poor results for the target market" (guideline 4.1). In accordance with guideline 1.5, the principle of proportionality applies, varying on a case-by-case basis depending on the risk, complexity and overall features of the product.

Portugal

The Portuguese legal framework establishes binding rules on product testing for structured deposits. The national regulation, transposing a delegated directive of MIFID II, provides that when running scenario tests, credit institutions should assess whether structured deposits are likely to produce unsatisfactory results for consumers.

They also need to identify the circumstances under which these results may occur, simulating the impact of specific events, such as:

- deteriorating market conditions;
- financial difficulties being experienced by the credit institution or the third party involved in the design of the structured deposit, or other counterparty risks;
- failure of commercial viability for the structured deposit; and
- much higher demand for the structured deposit than expected, putting a strain on the market for that deposit.

3.4 Third-party providers

Key point

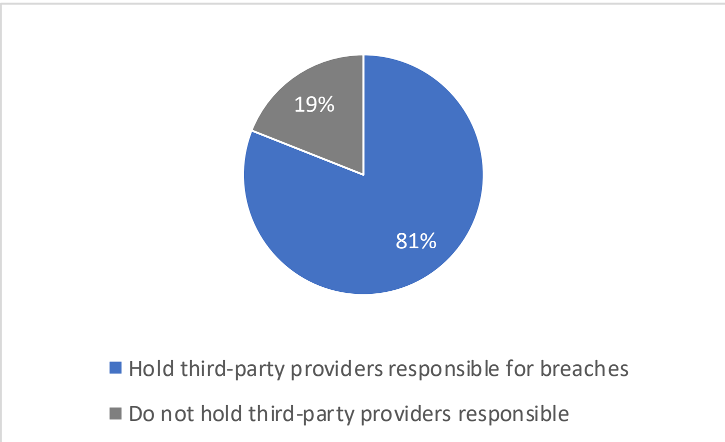
- In most jurisdictions, third-party providers are held responsible for breaches in relation to product design and distribution.

Third-party providers act as an intermediary between the provider of the financial product and the consumer.

When third-party providers undertake activities on behalf of the product provider, consumers may be exposed to misconduct and mis-selling of banking products. The liability, accountability and remuneration incentives of both providers and distributors are key areas of legislative development. Different supervisory approaches have been applied across jurisdictions to prevent misconduct of firms towards consumers.

Most respondents have legislation, rules or guidance holding third-party providers responsible for breaches of design and distribution obligations in relation to banking products (see Figure 9).

Figure 9. Proportion of respondents holding third-party providers responsible for breaches of design and distribution obligations



With regard to the liability and accountability of third-party providers, a wide range of supervisory approaches have been observed.

Financial intermediaries are held responsible for a breach of product governance provisions in Peru and the European jurisdictions that apply the EBA Guidelines on Product Oversight and Governance. Senior management are held accountable in their general capacity to manage risks associated with outsourced activities.

In Israel, financial institutions are required to ensure that third parties comply with the laws applicable to banks. Banks should undertake due diligence before entering a contract with a third party.

In Canada, guidelines outline best practices expected of third parties (e.g. outsourcing agreements should include requirements for the fair treatment of consumers).

In Japan, bank agents have responsibilities to provide information to consumers and depositors, to appropriately handle consumer information collected in connection with their activities, and to take other measures to ensure that business operations are managed appropriately.

3.5 Sales incentives

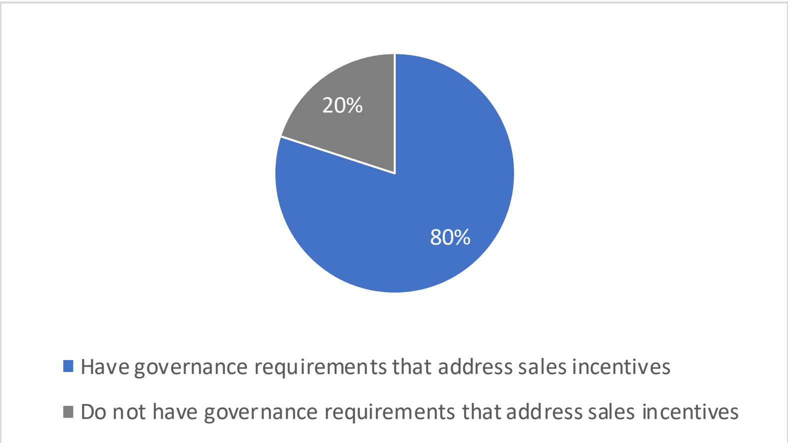
Key points

- Most respondents address the issue of sales incentives offered by both the providers of banking products and third parties using product governance requirements.
- To prevent unfair treatment of consumers, governance approaches are more common than mandatory limits to remuneration and incentives.

The management of sales incentives generally relies on governance requirements placing limits on particular remuneration to prevent risk of consumer detriment.

Most respondents have product governance requirements that address the issue of product providers and distributors receiving incentives for selling banking products (see Figure 10).

Figure 10. Proportion of respondents with product governance requirements that address incentives for sales by providers or third parties



The EBA Guidelines on Remuneration Policies and Practices related to the Sale and Provision of Retail Banking Products and Services (EBA/GL/2016/06) outline a comprehensive framework for approving, implementing and monitoring remuneration policies and practices, with the aim of preventing sales incentives that result in a detriment to consumers.

In Portugal, these guidelines were relied on by the Central Bank of Portugal in ruling on the remuneration policies and practices of the staff of credit provider's responsible for designing, marketing and granting mortgage credit agreements (Notice 5/2017).

In Brazil, senior management of financial services firms are often involved in establishing appropriate guidelines and policies on sales incentives for their staff and effective internal controls. In other jurisdictions (Canada, Germany and Peru), salary schemes for employees and board members may be set up by the firm to prevent potential conflicts of interest.

These schemes should be in line with the nature, size and complexity of operations and services provided by firms.

3.6 Distribution channels

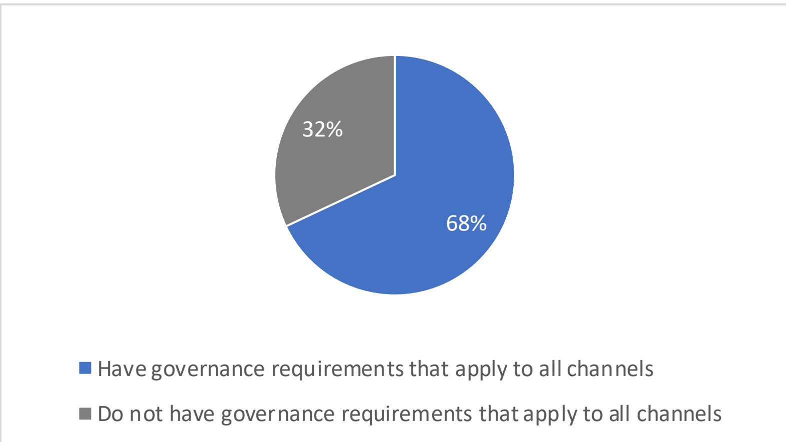
Key points

- In about two-thirds of jurisdictions, product governance requirements apply to all distribution channels for banking products.
- Some respondents reported that a number of distribution channels remain unregulated, particularly online channels and FinTech platforms.
- Restrictions on who can sell banking products exist in about two-thirds of jurisdictions.

For most respondents, consumer protection standards apply irrespective of the distribution channel used by firms (e.g. bank branches, bank agents or intermediaries, e-money and FinTech platforms).

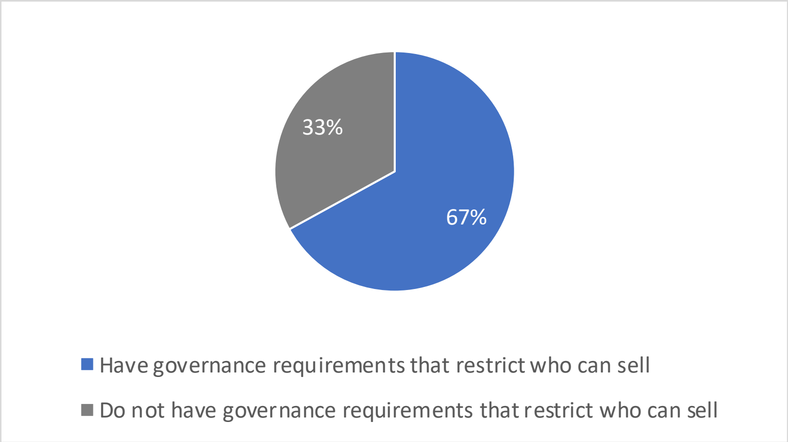
About two-thirds of respondents have product governance requirements that apply to all distribution channels of banking products (see Figure 11).

Figure 11. Proportion of respondents with product governance requirements that apply to all distribution channels of banking products



A similar proportion of respondents have restrictions on who can distribute or sell banking products (see Figure 12).

Figure 12. Proportion of respondents with product governance requirements that restrict who can sell banking products



A recent development in product governance regulation is the requirement for an assessment of whether particular distribution channels are appropriate to direct the product to the target market.

The EBA Guidelines on Product Oversight and Governance state that a manufacturer should select distribution channels that are appropriate to the target market and monitor that distribution.

The Second EBA Report provides for "good practices" in this respect.[8] These include ensuring that distributors commit to:

- verifying that the products are in line with the needs, interests, objectives and characteristics of consumers within the target market;
- providing adequate training to staff so they can sell the product to the correct target market;
- maintaining the product distributed in an unmodified form;
- using only product documentation approved by the originator; and
- monitoring the conduct of sales staff.

In Canada, the Autorité des marchés financiers requires intermediaries to meet expectations on marketing and distribution, including training sales staff, developing outsourcing agreements which are not detrimental for customers and properly assessing distribution methods.

In some jurisdictions, specific distribution channels are not regulated, for example direct sales channels, e-money and FinTech platforms. These gaps in product governance could give rise to potential for consumer harm with the increased reliance on digital channels in response to the COVID-19 pandemic.

[8] European Banking Authority, Second Report, p. 37.

3.7 Cooling-off and withdrawal periods

Key point

- Cooling-off and withdrawal periods are used by some respondents to mitigate risks associated with consumer understanding of new products and poor sales practices, such as high-pressure sales tactics.

Cooling-off and withdrawal periods refer to the period in which a consumer may terminate (or discontinue) a contract for a financial product without incurring a financial penalty.

Cooling-off and withdrawal periods for financial products and services are sometimes required to provide consumer protection after the point of sale. These provisions are designed to allow consumers to fully consider the purchase of financial products or services before the agreement is signed (cooling-off), or after a consumer has entered into an agreement (withdrawal). This can help protect consumers against poor sales practices.

Based on the responses provided, cooling-off periods are typical of mortgage loans and withdrawal periods are typically used in relation to consumer credit agreements.

The survey results show that withdrawal periods are more prevalent than cooling-off periods. Some respondents have a withdrawal period only, while others have both withdrawal and cooling-off periods.

In accordance with the World Bank's Good Practices for Financial Consumer Protection, financial services providers should be required to provide consumers with reasonable cooling-off and withdrawal periods for financial products or services that have medium or long-term components or sold via high-pressure sales or marketing.[9]

During withdrawal periods, consumers can withdraw from a contract without providing any reason or paying a penalty. Examples of withdrawal periods for consumer credit contracts are 7 days (Brazil), or 14 days (Turkey, Spain, France and Portugal).

Withdrawal periods relating to consumer loans and other banking products distributed via digital channels are in some cases regulated by special laws and regulations (Czech Republic).

For most respondents, the duration of the cooling-off period relevant to mortgages is 1–2 weeks: for example, 7 days (Italy and Portugal), 10 days (France) or 14 days (Czech Republic and Luxembourg).

In Italy, legislation implementing the European Union Distance Selling Directive provides a withdrawal period of 15 days for credit agreements signed both face-to-face outside of a point of sale and distantly.

Other respondents reported that withdrawal and cooling off periods are not available, as the regulator expects that consumers will have information allowing them to be properly informed and to make informed decisions regarding products before, during and after purchase (Canada).

[9] World Bank Group, *Good Practices for Financial Consumer Protection*, 2017, p. 39.

Case studies

Brazil

When evaluating new products, financial institutions usually offer cooling-off periods to both new and current clients.

Russia

Cooling-off periods operate in in the following way. After a borrower receives individual conditions on a consumer loan, they have 5 days to tell the lender whether they agree. During this period, the lender may not unilaterally change the offered conditions. If the borrower is not comfortable with the offered conditions, they can refuse to sign the agreement.

Withdrawal periods operate as follows:

- After signing a consumer loan agreement but before the funds are transferred to the borrower's account, the borrower can partly or completely withdraw from the loan by informing the lender.
- After the funds have been transferred in accordance with the agreement, the borrower can withdraw from the agreement within 14 days (or 30 days for specific-purpose consumer loans). The borrower must pay interest for the period in which the money was effectively borrowed and return the principal. The borrower does not have to give a reason for withdrawing.
- After 14 days (or 30 days for specific-purpose consumer loans) have passed, the borrower has the right to repay the consumer loan before maturity. In this case the borrower must give the lender 30 days' notice and pay interest for the period that the funds were at the borrower's disposal.

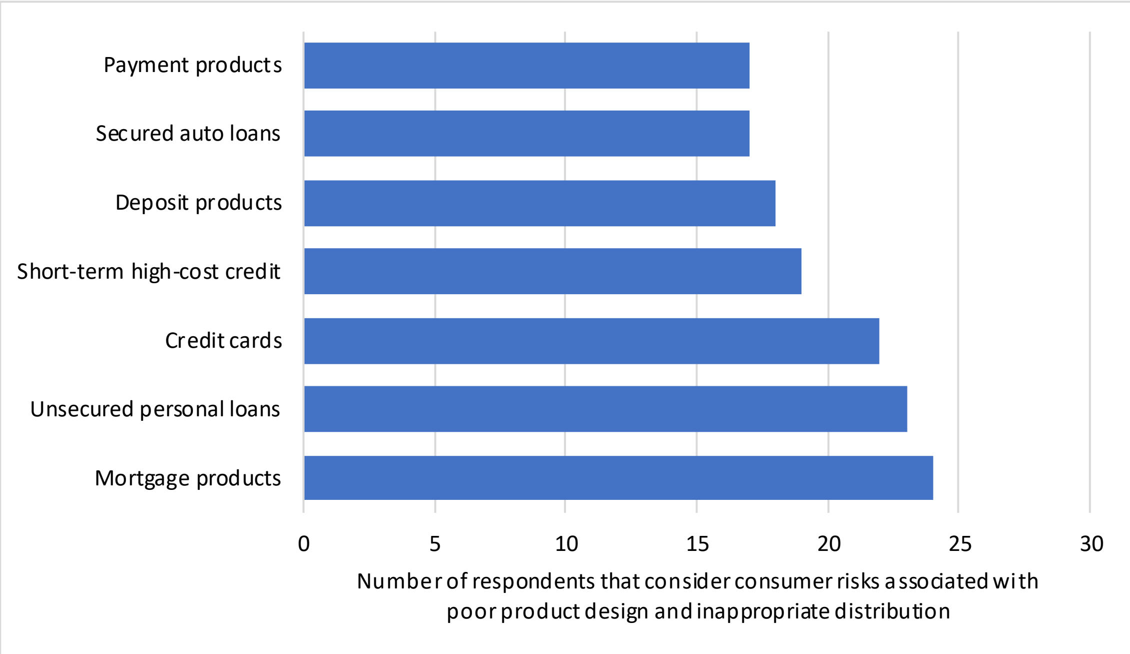
4. Risks for consumers

This chapter identifies and analyses risks for consumers associated with poor product design and inappropriate product distribution. It includes analysis of risks and regulatory responses specific to certain credit and banking products.

Figure 13 shows the number of respondents that consider consumer risks associated with poor product design and inappropriate distribution of particular products.

This chapter also considers protections provided for older consumers as a specific group of vulnerable consumers.

Figure 13. Number of respondents that consider consumer risks of particular products, by product



4.1 Credit products

Key points

- The main risks associated with credit products are over-indebtedness, poor product design, market-related risks and lack of consumer understanding.
- To mitigate these risks providers should establish appropriate target markets at the design phase and undertake product surveillance and monitoring after introducing financial products to the market.

Credit products considered by respondents include mortgages, unsecured personal loans, secured auto loans, short-term high-cost credit (STHCC) and credit cards (revolving credit). Not all loan types exist in all the jurisdictions surveyed (e.g. auto loans and STHCC).

STHCC generally refers to the practice of lending consumers small amounts of money for short periods (up to 12 months) at an interest rate that is high in comparison to other credit products. STHCC exists under different names, such as payday loans, small amount credit contracts and money-lending agreements. STHCC is uncommon or does not exist in some jurisdictions (Chile, Italy and Portugal).

Identified risks

Over-indebtedness was the most-cited risk associated with credit products (18 of 21 respondents on mortgages, 16 of 20 respondents on unsecured personal loans, 14 of 20 respondents on credit cards, 9 of 17 respondents on STHCC).

Creditworthiness assessment failures may lead to debt spirals, unsuitable and/or unserviceable credit limits or overdrafts. The provision of multiple credit contracts can leave consumers in a situation in which family income and assets become insufficient to meet their debt obligations.

Over-indebtedness may be particularly likely when loans are sold to consumers who already have several credit facilities or when inappropriate products are sold to vulnerable people. For example, personal loans and small amount credit loans can be comparatively easy to obtain and creditworthiness requirements might be less restrictive than loans for larger amounts.

The accumulation of various loans can adversely affect consumers' ability to meet their repayment requirements and make it difficult for them to obtain loans in the future. This can have negative financial and health repercussions for consumers. Academic studies have found that over-indebtedness can lead to depression and stress, among other unintended adverse consequences for consumers.[10]

Over-indebtedness may be due to:

- *failures of product suitability* – where a product does not meet the financial objectives or circumstances of a specific consumer (common concerns of respondents are the high cost and complexity of credit cards in comparison to other credit facilities, and the failure of STHCC providers to tailor products to suit the needs of the consumer);
- *unserviceability* – where a consumer cannot service the loan based on their financial situation (including of any adverse events that may affect their situation); or
- *poor internal creditworthiness assessments* – where rules or assessments do not properly measure the consumer's capacity to meet the costs of the loan.

In the case of variable-rate credit arrangements, these risks can be aggravated by an eventual rise in interest rates.

Improper product design was identified as a risk, particularly due to inflexibility in catering for the needs of the consumer (cited by 6 of 20 respondents on credit cards, 5 of 17 respondents on STHCC, 4 of 20 respondents on unsecured personal loans). Examples

[10] Turunen, E., Hiilamo, H. Health effects of indebtedness: a systematic review *BMC Public Health* 14, 489 (2014). https://doi.org/10.1186/1471-2458-14-489

are products which contain pre-payment barriers (fees, lack of interest charge reduction, etc.), products which do not provide flexibility when the consumer experiences an emergency, and long-term contracts where early payment is penalised.

STHCC is attractive to vulnerable consumers with limited financial resources who cannot afford cheaper debt. STHCC products typically feature high costs and charges, roll-overs and a lack of cooling-off periods. If products are paid down early or cancelled, consumers usually incur the cost of the whole contract period.

Respondents identified that improper product design is a risk associated with unsecured personal loans due to:

- high interest rates associated with loans not secured by property or assets;
- excessive or disproportionate penalties for early payoff; and
- late payment penalties that are disproportionate to the delay in payment.

Similarly, credit cards may include high non-interest charges and fees, including high late fees. These can quickly increase the debt amount under default. In addition, some products with higher interest rates (e.g. convenience or retail store credit cards) may use promotions or discounts to entice users to spend more.

Where credit facilities can be used beyond set limits, potential exposure may increase. Another risk associated with credit card design is the possibility that consumers will be vulnerable to credit card fraud (cited by 7 of 20 respondents).

Respondents identified that secured auto loans tend to have terms that are longer than optimal: for example, a consumer may end up repaying the loan long after the vehicle underlying the contract has been retired from the market.

Inadequate sales practices and poor marketing were identified as a risk for secured auto loans (6 of 14 respondents), particularly when associated with cross-selling of products and high-pressure sales environments. Respondents identified risks associated with tying or cross-selling related – but often unsuitable – products. An example is mis-selling of add-on insurance products that are not directly associated with the loan and do not benefit the consumer.

Inadequate sales practices were also a concern associated with credit cards (5 of 20 respondents). These practices include mis-selling of credit cards when cheaper or non-revolving alternatives are available, mis-selling of add-on insurance, and poor marketing practices resulting in consumers taking up lines of credit they do not need.

Limited consumer understanding of product terms and conditions was identified as a risk (cited by 8 of 21 respondents on mortgages), along with a lack of transparency (4 of 20 respondents on credit cards) and consumers vulnerability (2 of 17 respondents on STHCC).

Failures in consumer understanding can arise due to:

- *circumstances of vulnerability* – such as limited financial literacy, age or culture; and
- *lack of transparency* – such as overcharging, hiding fees, changing fees after agreeing to provide credit, or offering “teaser” rates for the first period of the product.

This issue becomes even more problematic when there are inadequate sales practices, low barriers to obtaining credit and high interest rates.

Confusing terms, hidden charges and revised charges heighten the risks associated with limited understanding. For example, sales of credit cards with these characteristics to consumers in vulnerable circumstances can wreak havoc in consumers' personal finances if consumers are left unprotected.

Regulation and risk management

Numerous respondents referred to the role of **product governance** requirements in preventing consumers from being sold products that are not appropriate for them, being overburdened by the costs of credit and in reducing the risks of poor marketing.

Defining a target market can help to ensure that consumers get a product with features that suit them and at a cost they can afford. European Union requirements focus on ensuring that the interests, objectives and characteristics of consumers are considered by providers when they are designing products, bringing them to market, and reviewing them over their life cycle. Proper product governance procedures that direct the distribution of different types of credit products to suitable groups can reduce the risk of poor marketing practices.

To prevent over-indebtedness, several jurisdictions stated that credit providers should establish reasonable written procedures to assess a consumer's **creditworthiness** before providing a loan. Regulations on creditworthiness may set limits on the size of mortgages that consumers can access, through the use of loan-to-value ratios and loan-to-income limits.

Respondents indicated that it is important that lenders have sufficient information about the consumer and appropriate assessment procedures to make decisions about providing a loan. Information obtained from the consumer to inform subjective decisions about the consumer's capacity to repay the loan should include details of their financial circumstances, income and expenditure, assets and liabilities and information obtained from credit reference agencies. This information can also be used to inform objective decisions on whether the specific product is likely to meet the needs and objectives and characteristics of the consumer.

Product testing enables firms to assess how the product would affect their consumers under a wide range of scenarios, including stressed scenarios. Product monitoring can ensure that the interests, objectives and characteristics of consumers continue to be considered throughout the life of the product.

Some authorities set **requirements for advertising** of credit to personal consumers to mitigate the risk of poor marketing practices. In Hong Kong, all advertisements for bank loans must contain the following message: "To borrow or not to borrow? Borrow only if you can repay!"

In some jurisdictions, supervisors have powers to prohibit or limit poor sales practices (e.g. selling add-on insurance products where there is little or no consumer benefit). Likewise, in some jurisdictions the regulator can directly intervene to ban a damaging product, feature or fee.

Respondents also stated that strong **disclosure obligations** help address risks around consumer understanding. Providing consumers with information can help them make informed decisions about meeting their obligations under the loan, compare alternative products and prevent over-indebtedness. Several jurisdictions use a standardised document which sets out product details along with minimum content including product features, costs and obligations.

Additionally, the right to information during the loan agreement can contribute to consumer understanding of the product including costs, outstanding amounts and defaulted amounts. For instance, in Portugal during the term of the agreement, bank customers are entitled to receive a detailed periodic statement with information on the evolution of the loan.

Brazil and Peru have rules limiting the services offered to consumers that may attract a fee, while standardising the terminology used to refer to those services, as well as the terms and conditions on which a fee might be charged.

Respondents also provided **regulatory solutions** for specific product design risks. For example, in some jurisdictions a motor vehicle loan term must align with the economic life of the vehicle and large final payments of a loan or balloon payments must not be disproportionate.

The existence of a cap rate system is also an example of a regulatory solution for consumer credits. In Portugal, the Central Bank of Portugal calculates and publishes quarterly the maximum interest rates in force for each type of consumer credit, based on the Annual Percentage Rate of Charge practiced by credit institutions in the market in the previous quarter, in the different types of agreements.

Regulation of STHCC lending can also help mitigate risks as well. For example, Australia and Ireland have generally prohibited very short-term lending. In other jurisdictions there are caps or limits on borrowing capacity. The Turkish supervisory authority has set a cap on the proportion of a consumer's income that can be used to repay a STHCC at 25% of the consumer's income.

On credit card fraud, Hong Kong regulations stipulate that, provided the cardholder has not acted fraudulently, with gross negligence or has failed to inform the card issuer as soon as reasonably practicable that the card has been lost or stolen, the cardholder's maximum liability for loss of the card is confined to a limit specified by the card issuer, not exceeding HKD 500 (around USD 65).

Case studies

Australia

In July 2018, the ASIC published Report 580 *Credit card lending in Australia*, which found almost 550,000 people in arrears, an additional 930,000 with persistent debt and an additional 435,000 people repeatedly repaying small amounts. Moreover, consumers carrying balances over time on credit cards with high interest rates could have saved more than AUD 621 million in interest in 2016–17 if their balance had been on a card with a lower interest rate.

Since this report was released, ASIC has prescribed a three-year period for credit card responsible lending assessments, starting in 2019. This means that credit providers must not provide a credit card with a credit limit that the consumer could not repay within three years. Other measures taken include banning unsolicited invitations to increase credit card limits and making it easier for consumers to cancel credit cards.

Some lenders have also committed to changes to address ASIC's concerns, taking proactive steps to help consumers with problematic credit card debt and taking a fairer approach to balance transfers and consumers exceeding their credit limit. Product governance requirements will apply to credit cards from 5 October 2021.

Ireland

STHCC is offered through moneylenders licensed under the Consumer Credit Act, 1995. The payday lending model – which typically offers very short-term credit and where interest rates can be as high as 1,500% – is not permitted in Ireland. The Act prohibits licensed moneylenders from applying additional charges (other than collection charges) to a moneylending agreement, including charges in the event of a default on payments. Moneylenders are subject to conduct of business requirements set out by the Central Bank.

Japan

Regarding investment property loans, there is a risk that property agents may falsify evidence of property prices and the consumers deposit and/or income so that the consumer can receive a larger loan. This can lead to significant consumer protection problems.

Luxembourg

Luxembourg law, transposing the Mortgage Credit Directive, entitles the creditor to fair and objective compensation, where justified, for costs directly linked to early repayment, but does not penalise the consumer. Where a mortgage is entered into to finance a residence for the consumer (for at least two years), the compensation for early repayment is limited.

Netherlands

Most risks regarding unsecured loans are connected to revolving credit. A notable risk arises from the connection between the type of loan and the consumer’s spending intention. For example, where a loan provider has offered a revolving line of credit with a duration of 15 years for the purchase of a car, an important risk remains the management of the personal loan throughout its duration, in particular the provider’s responsibility to ensure that the loan still fits the consumer’s financial situation.

Peru

In 2018, the Superintendence of Banks, Insurers and Private Pension Funds (SBS) identified that some financial institutions were carrying out unrequested currency conversions to US dollars for every purchase made with a credit card in Peru through international stores. This included transactions made in Peru through apps and websites (e.g. Uber, Glovo, PayPal, Airbnb and Apple). Given that most credit cards in Peru can be charged in both soles and US dollars (for any transaction not in soles), this practice forced consumers not only to accept the currency conversion loss but also to pay the additional fee established by the commercial payment network (in this case, VISA).

Applying the new principles’ approach in the Regulation for Market Conduct Management within the Financial System (2017), the SBS observed this practice, requesting that institutions either communicate properly those cases in which a consumer could face a currency conversion (for instance, when purchasing services through an online store located outside Peru, despite the store showing prices in Peruvian Soles) or stop charging in a currency other than the one selected at the time of the transaction. Among the principles established in the Regulation, financial institutions are required to have due regard, in product design, for:

- consumer rights;
- current rules and regulations;

- compliance with contractual agreements (in this case, most credit card companies in Peru agreed to charge in soles for transactions made in soles); and
- appropriate disclosure and sales by using non-misleading mechanisms.

Spain (1)

Spain introduced a regulation concerning revolving credit in July 2020. It requires lenders to periodically send the borrower, free of charge, information about:

- the estimated date the borrower will finish repaying the loan, based on the current repayment instalments;
- scenarios illustrating the possible savings that would be made by increasing the instalment amount by 20%, 50% and 100%; and
- the amount of the monthly instalment that would enable settlement of the debt within one year.

Spain (2)

In Spain, auto loans are usually distributed, along with insurance and accessory services, through a network of car dealers. For the purposes of the EBA Guidelines on Product Oversight and Governance, these dealers are considered to be credit intermediaries (distributors).

An analysis by Central Bank of Spain (Banco de España) of a sample of auto loans provided by the car dealerships revealed a lack of transparency about the terms of financing. In particular, to boost sales, car dealers would offer a discount if auto loans were held for at least 36 months. However, where the loan was partially repaid before the end of this period, the consumers would have to pay back part or all of the discount to the car dealer.

Given that the car dealerships operate as financial intermediaries in making a loan for a vehicle purchase, the contracts should stipulate all the early repayment conditions, associated discounts and penalties so that consumers can make an informed decision about whether they are willing to take out the loan.

The analysis also revealed that consumers might not be getting appropriate explanations about the credit agreement or receiving the Standard European Consumer Credit Information in good time before they become bound by a contractual obligation.

4.2 Payment products

Key points

- The main risks associated with payment products relate to fraud and payment processing issues, including delays and service outages, incorrect payment processing and cyberattacks.
- Given the increased uptake of payment products, product testing and sales targeting is important. A clear definition of the target market may help to protect vulnerable consumers. Regulation can also address security risks, product testing requirements and redress to promote consumer confidence.

Identified risks

The biggest concern for respondents associated with payment products is fraud (10 of 17 respondents). This includes security risks arising from the use of online and mobile payments that might enable fraudulent access or unsecure transmission of personal or payment data. Misuse of personal data may result in unauthorised payments (fraudulent transactions), scams, and identity theft and/or data breaches due to insecure practices in consumer data storage (by the firm, a provider of the payment service or a related third party).

The second issue raised by respondents was payment processing (4 respondents). This mainly concerns:

- risk of incorrect payments (due to bad input or processing), especially for low-literacy or vulnerable consumers;
- service outages that leave consumers unable to send or receive money or access and use their funds, which can undermine confidence in the payment product;
- delays in payment processing; and
- concerns regarding cyberattacks to the infrastructure (i.e. denial-of-service attacks), which can be significant given the prevalence of digitally backed financial payment services.

Respondents also mentioned a lack of transparency, particularly in digital/mobile channels, where inadequate disclosure of fees, terms and conditions is a concern. This is particularly the case in channels where it is not easy to access or store financial information (e.g mobile kiosks in a convenience store).

One respondent (Spain) noted the potential for inappropriate product design, product features or poorly targeted sales, when unsuitable products charge fees to consumers are charged fees for services they do not use.

Regulation and risk management

Regulation is key to protecting users from the risks associated with payment products. Adequate product testing and redress requirements are important measures to promote consumer confidence and enhance the consumer experience. Critical requirements should address security risks in the payments market. For example, European Union countries include regulatory technical standards on strong customer authentication and secure communication under PSD2.[11]

Product governance requirements, such as a clear definition of the target market for digital payments, may help to protect more vulnerable consumers (e.g. older consumers) from security risks.

Proper payment infrastructure rules and regulations should be enforced to alleviate consumer risks arising from service outages and payment delays. For example, in Peru, payments made using a financial institution's network or its channels (proprietary or third party) are recognised by the date of payment rather than the date of processing.

Disclosure regulation is relevant to payment products. In particular, ensuring terms and conditions are accessible and easy to understand for products and services sold using mobile phones or digital means as it is difficult to read a complex contract or a list of fees on a cell phone screen while conducting a financial transaction.

Case study

Turkey

Most complaints handled by the Customer Complaints Arbitration Commission relate to internet purchases made, without the knowledge or confirmation of the card holder, through the fraudulent seizure of card data. On 20 October 2016, the Banking Regulation and Supervision Agency made the use of credit and debit cards for online shopping subject to card holder approval.

As a result, unless the customer requests this facility, they are not given the capacity to buy online using their card. Measures were taken to increase the awareness of card holders to ensure that they make informed decisions to prevent fraud.

[11] Second Payment Services Directive. The full title is Directive (EU) 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC. https://ec.europa.eu/info/law/payment-services-psd-2-directive-eu-2015-2366_en

4.3 Deposit products

Key points

- The main risks associated with deposit products include a lack of transparency regarding fees and conditions, mis-selling of deposit products and improper product design.
- Regulation of product design, sales practices and fraud protection are important to address the risks identified. Financial literacy can also help consumers better understand the risks associated with deposit products.

Identified risks

The main risk cited by respondents was lack of transparency about conditions and fees (6 of 16 respondents). Hidden fees, and penalties and interest rates that change given certain conditions or that are not easily understood, can cause trouble for consumers. One example is non-disclosed automatic renewal of term deposits when no instruction is received from consumers after maturity

Another risk identified was the mis-selling of deposit accounts and investment products (4 respondents): that is, the sale of deposit products to consumers when the product does not suit their needs. Some respondents reported that investment products had been sold as if they were deposit accounts. Others reported aggressive sales of add-on products to consumers; such products are often of no use or have an inflated price. Examples of add-on products are insurance or mutual fund products, debit card insurance and index-based investment products offered as “zero risk” or “guaranteed” deposits that have prize contests attached and are more expensive than simple accounts.

Poor product design was identified as a risk (3 respondents). Examples are high costs and restrictions on the availability of funds. In some cases, products that impose periodic fees and low interest rates can make deposits unprofitable. This includes savings products with restrictions on withdrawal of the full amount.

Fraud is also a concern (3 respondents), including fraudulent activity, data breaches and unauthorised transactions; particularly when deposit products may be used in conjunction with a payment product.

One respondent (Australia) has found that deposit products sold in schools can expose vulnerable young consumers with low levels of financial literacy to sophisticated advertising and marketing tactics.

Depository institution failure was cited as a risk by several respondents; however, this is not a risk faced by consumers due to poor product design, but rather the nature of the modern financial system. Lender failure is addressed by subjecting banks to a complete prudential supervision framework, which is outside the scope of this paper.

Regulation and risk management

There are many regulatory initiatives that can help to mitigate these risks; most of these have been discussed in relation to disclosure and fraud protection for credit products and payment products.

Regulating product design is paramount to ensuring that customers understand the product and stand to benefit from it. Design features should include simple interest rate schemes, a clear fee structure, and no improper barriers to or restrictions on a consumers use of their funds (whether due to minimum amounts, required channels for certain transactions, etc.).

Proper product distribution and sales processes, including proper disclosure, should be a regulatory requirement to ensure consumers understand the financial products being offered to them. Also, regulation (or supervision) of sales incentives should be required to reduce the risk of poor sales practices relating to the sale of deposit products.

Finally, financial literacy can help to empower consumers to better understand product features.

Case studies

Australia

A product provider sent pre-approved overdraft offers to existing customers without inquiring into the customers' objectives or financial position. Many of the customers using overdrafts have poor financial literacy or limited understanding of what an overdraft is or the impact it would have on their financial position.

It is expected that the Australian Government's design and distribution obligations will address some of these issues by requiring product issuers to design for and distribute products only to those for whom it would be appropriate.

Ireland

The Central Bank of Ireland identified the sale of structured retail products to consumers as a risky activity.

In this context, the Central Bank completed a themed inspection of the Irish market for structure retail products. The inspection identified that there has been a significant move away from capital-protected, deposit-based products and towards more complex, capital-at-risk products. The Central Bank also identified that many firms had weak product governance arrangements for the development and sale of complex, risky products, particularly in identifying the appropriate target market for such products.

In September 2016 the Central Bank published an industry letter highlighting the findings from the inspection which included details of the weak product governance arrangements identified.

4.4 Legal framework for vulnerable consumers

Key points

- Respondents take both direct and indirect approaches to requiring an evaluation of the impact a product may have on specific vulnerable groups in the population (including older consumers) as part of a product governance framework.
- Most respondents do not have specific provisions relating to the sale of banking products to older persons. For these respondents, age is not typically included as a factor in target market considerations.
- Many respondents have broad provisions that provide indirect protections to older consumers when purchasing financial products.

Respondents were asked whether there are any product governance requirements to evaluate and consider product impact on vulnerable populations (e.g. older consumers).

Vulnerable consumers

Vulnerable consumers are defined as "consumers who are susceptible to detriment at a particular point in time, owing to the characteristics of the market for a particular product, the product's qualities, the nature of the transaction of the consumer's attributes or circumstances."[12]

Challenges can be faced "by consumers who may be vulnerable to detriment due, for example, to their psychological or financial circumstances, the nature of a transaction, or the place or context of a purchase. While all consumers may at times be vulnerable, disadvantaged consumers may face challenges on a persistent basis; this may be due, for example, to low education, language limitation, or cognitive or physical impairments."[13]

When designing and marketing new products, manufacturers should consider the needs of the various target consumer groups, including vulnerable or disadvantaged people, and the impact the product has on those consumers.

Although many jurisdictions do not have product governance requirements specifically for protecting vulnerable consumers, they may have other protections in place which indirectly protect vulnerable consumers.

Case studies

Canada

There is no specific regulation addressing vulnerable people, but the Autorité des marchés financiers expects fair treatment of consumers to be a core component of the governance and corporate culture of financial institutions.

[12] OECD recommendation on consumer policy decision making, March 2014, p. 4. https://www.oecd.org/sti/consumer/Toolkit-recommendation-booklet.pdf

[13] OECD recommendation on consumer policy decision making, March 2014, p. 2. https://www.oecd.org/sti/consumer/Toolkit-recommendation-booklet.pdf

In its Sound Commercial Practices Guideline, the Autorité des marchés financiers elaborates that generation of management information makes it possible to:

- assess the institution's performance with respect to fair treatment of consumers;
- react, in a timely manner, to changes or risks likely to have a negative impact on the institution's customers; and
- prove that fair treatment of consumers forms part of the institution's corporate culture.

The financial wellbeing of all Canadians is monitored and, when needed, the Financial Consumer Agency of Canada will issue an advisory note or report to address issues. The agency is working with Canadian Bankers Association and seniors' associations to develop a code of conduct to protect senior citizens.

China

The Administrative Rules Governing the Credit Card Business of Commercial Banks stipulates that commercial banks should formulate a system for the governance of student credit cards based on the principle of prudence, including determining the original credit line and the maximum credit line, adjusted according to use. At the same time, commercial banks should introduce a secondary source of repayment, and clarify procedures for checking lines of credit.

European Union

Currently the EBA Guidelines on Product Oversight and Governance do not include explicit requirements to evaluate and consider product impact on vulnerable populations. However, manufacturers are expected to carry out product testing in a way that allows them to verify how the product would perform and behave once marketed, and how changes of circumstances could affect the consumers within the target market.

Hong Kong

Regarding general banking products, the Code of Banking Practice provides that special attention should be given to the needs of vulnerable groups (which include aging/elderly consumers). The provision of broad-based financial education and information to deepen consumer financial knowledge and capability should be promoted, especially to vulnerable groups.

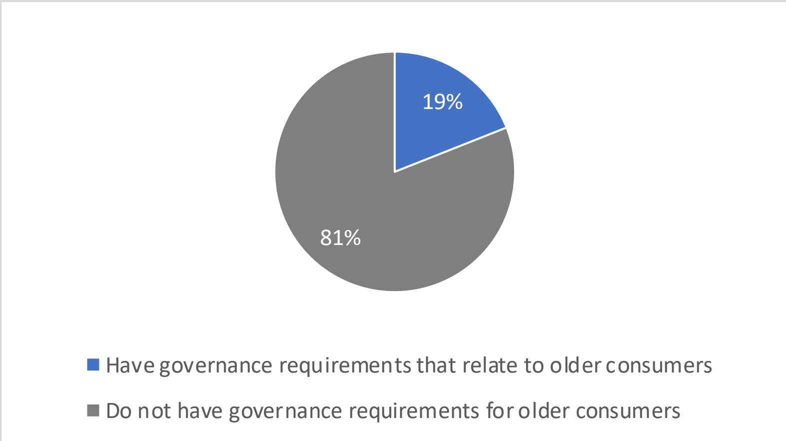
One of the principles of the Treat Customers Fairly Charter is that retail banks in Hong Kong should provide reasonable access to basic banking services to members of public, paying special attention to the needs of vulnerable groups. For example, banks should offer basic banking services (e.g. HKD deposit and withdrawal services) that do not impose fees and charges (e.g. low-balance fees or dormant account fees).

Specific protections for older consumers

Consumer protection for the aging was a focus of the G20/OECD Task Force on Financial Consumer Protection and FinCoNet under Japan's presidency of the G20 in 2019. The OECD's recent report on Financial Consumer Protection and Aging Populations provides context to the risks for older consumers and regulatory and supervisory responses to those risks.[14] The report highlights the importance of ensuring that financial products are available and accessible to older consumers, and designed to meet their needs.

Nonetheless, most respondents do not have specific provisions that relate to banking products being sold to older consumers (see Figure 14).

Figure 14. Proportion of respondents with product governance requirements that address banking products being sold to older consumers



Respondents that have specific product governance requirements relating to vulnerable consumers highlighted the specific focus on the needs of those groups of consumers.

This focus is reflected in legal safeguards such as:

- presumption of vulnerability of the elderly;
- prohibition of aggressive marketing of financial products; and
- extension of the withdrawal period for this consumer segment.

Case studies

China

Banking institutions are expected to fully consider the rights and interests of specific groups (e.g. migrant workers, the disabled, those who are laid-off or unemployed and the elderly) in the process of providing financial services. Institutions should develop financial products according to the consumption characteristics and risk preferences of those specific consumer groups, provide necessary conveniences, and meet their reasonable financial needs so as to effectively protect their rights to fair trade and to be respected.

Portugal

In 2017, the Central Bank of Portugal detected that a credit institution was selling mid-term deposits which did not allow early redemption to people over 80 years of age. The bank

[14] OECD, Financial Consumer Protection and Aging Populations, 2020. https://www.oecd.org/daf/fin/financial-education/Financial-Consumer-Protection-and-Ageing-Populations.pdf

issued a recommendation to the institution about compliance with the general conduct duties applicable to all institutions and highlighted the need to identify the target market for each banking product and service while considering demographic factors such as the age of consumers.

Broad protections for older consumers

Many respondents that do not have specific requirements for the provision of banking products to older consumers do have indirect protections such as:

- prohibitions on discriminatory sales practices;
- prohibitions on unfair commercial practices; and
- incrimination of the abuse of the state of weakness.

Case studies

Brazil

A range of safeguards are in place to protect the rights of older people in relation to financial services. These include laws preventing:

- taking advantage of elderly people to force a sale (e.g. vulnerability of the elderly is presumed);
- discrimination against elderly citizens by preventing or hampering their access to financial services;
- financial abuse of the elderly, such as a prohibition of discrimination by denying credit to highly indebted elderly citizens; and
- abusive practices (e.g. law project extending the right to withdraw from an agreement to purchase a product or service from 7 to 45 days).

Canada

Canada does not have specific requirements relating to banking products being sold to older persons.

The Financial Consumer Agency of Canada is currently working on a voluntary code of conduct for banks which would frame their approach to seniors and the services and products they offer to them.

The Autorité des Marchés Financiers is producing a good practice guide on dealing with vulnerable people for organisations and representatives. The guide will suggest practices to:

- help clients maintain their financial health and prevent abuse; and
- identify and assist financially abused clients.

European Union

Current EBA Guidelines on Product Oversight and Governance do not include explicit requirements to evaluate and consider product impact on vulnerable populations. However, manufacturers are expected to carry out product testing in a way that allows them to verify how the product would perform and behave once marketed, and how circumstances/changes would affect the persons within the target market identified. Consequently, manufacturers should bear in mind that the relevant characteristics of the target market identified could also include considering the characteristics of vulnerable consumers.

France

The French penal code provides that fraudulently abusing the weakness of a person with a particular vulnerability (e.g. due to age) is punishable by 3 years' imprisonment and a fine of EUR 375,000.

Germany

There are specific laws which take age into consideration (e.g. Act Against Unfair Competition). When determining whether a commercial practice is aggressive, consideration must be given to deliberate exploitation of any specific misfortune or circumstance that may impair the judgement of a consumer, or other market participant, when they are making a decision. Consideration must be given to mental and physical infirmity, age, inexperience in commercial dealings, credulity, fears and the predicament of consumers.

Issues relating to elder financial abuse are not specifically addressed by German financial consumer protection law.

Ireland

The Central Bank's Consumer Protection Code 2012 contains provisions on the appropriate treatment of "vulnerable customers". The Code aims to ensure a consistent level of protection for consumers, regardless of the financial product. It requires that where a vulnerable consumer is identified, the regulated entity must ensure that the consumer is provided with such reasonable arrangements and/or assistance as may be necessary to facilitate them in dealing with the entity.

Peru

Regulation requires non-discriminatory sale processes when selling to older people.

5. Consumer complaints

This chapter outlines the role of consumer complaints in product governance, the goals and methods of dispute resolution, how respondents monitor and supervise complaints handling and firms' reporting obligations.

Regulation concerning the efficiency and effectiveness of product governance by financial services providers should cover the product life cycle from design to post-sales, and product review with the objective of producing equitable and fair treatment of customers.[15] These requirements should provide "clearer means for the supervisory authority to take action" including preventive measures "when unsuitable products are introduced in the market or offered to a particular consumer".[16]

Complaints handling and reporting helps providers identify failures in their products and services. It also allows supervisors to identify risks to financial consumer protection, enabling regulatory and supervisory efforts to be prioritised.[17]

5.1 Role of consumer complaints in product governance

Key point

- Most respondents reported that consumer complaints play a role in the oversight of in product governance. This includes consumer complaint reporting to product manufacturers for the purposes of the review of product design and target markets and reporting of complaints to supervisors to ensure produce governance requirements are being met.

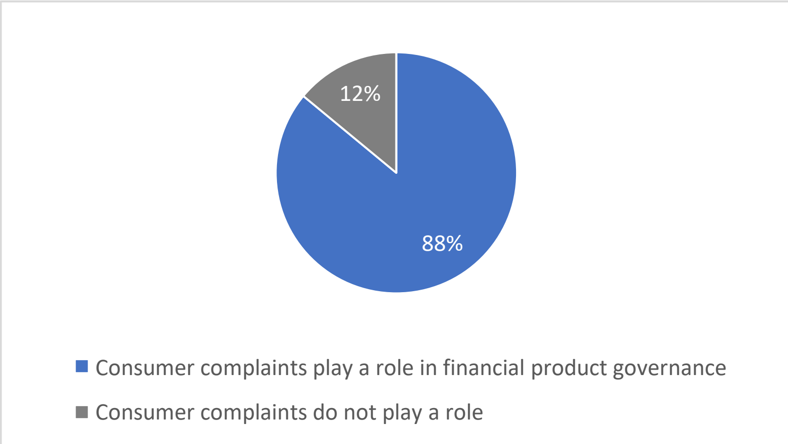
About three-quarters of respondents reported that consumer complaints play a role in their product governance requirements (see Figure 15).

[15] G20/OECD Task Force on Financial Consumer Protection, G20 High-level Principles on Consumer Protection, 2011, p. 5.

[16] World Bank Group, Good Practices for Financial Consumer Protection, 2017, p. 39.

[17] G20/OECD Task Force on Financial Consumer Protection, Financial Consumer Protection Risk Drivers: A Framework for Identification and Mitigation in Line with the High-Level Principles on Financial Consumer Protection, 2018, p. 19, Principle 9.

Figure 15. Proportion of respondents reporting that consumer complaints play a role in financial product governance



Complaints information is an important mechanism to review whether products provide the intended outcomes for consumers in line with product governance obligations.

In some jurisdictions, there is a financial complaints authority that provides consumers with a direct connection to supervisors (Brazil). In other jurisdictions, the appointment of a Market Conduct Officer is mandatory. Among other duties, this officer is responsible for identifying aspects of design or distribution that could have an impact on users, reporting them to the senior management, and proposing corrective measures (Peru). Other supervisors closely monitor the nature of complaints received to identify concerns relating to product design that might not otherwise be detected (India, Portugal and Spain).

Where product governance frameworks require that products are designed for a defined target market, the reporting of complaints information to the product manufacturer can be important for the review of the product to ensure it remains appropriate for, and is being distributed to, the target market. In Australia, where there is an event or circumstance that indicates the target market determination is no longer appropriate, the issuer must review the determination within 10 business days.

The survey reveals good culture in financial firms is key to delivering appropriate outcomes for consumers as customer service and sales staff have key roles in identifying problems, avoiding negative consumer experiences and proposing appropriate remedial measures. Where firms directly identify and address issues, this should reduce the need for regulatory intervention. [18]

Elevating the collective consumer voice is important to understand risks facing consumers, to inform changes to regulation and to make financial service providers more responsible.[19] Complaint information may serve as an impetus for identifying systemic issues with financial product design and for reforming banking practices.

[18] OECD Recommendation on Consumer Dispute Resolution and Redress, 2007, p. 8

[19] Consultative Group to Assist the Poor, Elevating the Collective Consumer Voice in Financial Regulation, March 2021.

As stated by the G20/OECD Task Force on Financial Consumer Protection, "jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient".[20] Independent redress processes are important to address complaints that are not efficiently resolved through financial services providers' internal dispute resolution mechanisms. The survey findings show that supervisors are working towards this goal.

5.2 Dispute resolution

Key point

- The Ombudsman office is consistently referred to as an important communication channel to guarantee good governance and provide alternative dispute resolution.

The purpose of dispute resolution is to provide consumers with the opportunity to resolve their complaints against firms. The term "dispute resolution" encompasses "informal and formal mechanisms, online and offline mechanisms, private and public sector mechanisms, and administrative and judicial mechanisms".[21]

In this context, supervisors use three complimentary approaches:[22]

- providing dispute resolution for consumers acting individually, collectively or assisted by enforcement entities;
- establishing that credit providers and credit intermediaries provide consumers with clear information on internal and external complaints handling mechanisms, including alternative dispute resolution schemes; and
- ensuring that domestic jurisdictional frameworks provide a variety of mechanisms for dispute resolution, to respond to the varying nature and characteristics of consumer complaints.

Most respondents have a comprehensive consumer protection regulatory framework which requires firms to:

- identify misconduct at both the firm level and systemic level;
- use analysis of the complaint and dispute resolution process as an indicator for assessing the provider's performance regarding the fair treatment of consumers; and
- guarantee that complaints are dealt with.

[20] G20/OECD Task Force on Financial Consumer Protection, G20 High-level Principles on Consumer Protection, 2011, p. 7.

[21] OECD Recommendation on Consumer Dispute Resolution and Redress, 2007, p. 8

[22] OECD Recommendation on Consumer Dispute Resolution and Redress, 2007, pp. 9–11.

5.3 Monitoring and supervision of complaints handling

Supervisors should have systems to collect and analyse consumer complaints,[23] as well as capacity to generate information for an internal and external audience.[24] This information helps supervisors improve market conduct by enabling the identification of consumer risks, regulatory gaps, systemic irregularities, effectiveness of regulatory measures and compliance with laws and regulations.[25]

In this context, the survey reveals the importance of developing mechanisms for collecting and handling consumer complaints relating to product design, sales processes, market performance and product governance.

For example, the survey shows that a high number of complaints may trigger a review of the appropriateness of the product oversight and governance requirements (Czech Republic, Germany and Turkey). The evaluation of those complaints by manufacturers may contribute to improvements to the design of products or result in the removal of products from the market.

Consumer complaints information can be used to refine product governance requirements and assess whether consumers are being treated fairly. The survey indicates that supervisors in many jurisdictions have developed tools and mechanisms to monitor consumer complaints related to both a specific supervised entity and markets issues more generally. Market data can be used to evaluate the effect of a financial product or regulation.

Case study

Portugal

The Central Bank of Portugal, under its oversight mandate, uses complaints' handling as a tool for retail banking market supervision and to ensure consumer protection.

The Portuguese model of handling complaints establishes that every citizen has the right to lodge a complaint related to the actions of an institution free of charge. For that purpose, bank customers may make a complaint in the complaints book that institution are required to make available at their branches and online or submit their complaint directly to the Central Bank of Portugal.

All complaints received by the Central Bank of Portugal are analysed, considering the product or service that generated the complaint and the main issue addressed in the complaint. Every half a year a list of institutions with a higher complaints rate is published.

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[23] OECD, Recommendation of the Council on Consumer Dispute Resolution and Redress, 2007, p. 13.

[24] G20/OECD Task Force on Financial Consumer Protection, G20 High-level Principles on Consumer Protection, 2011, p. 7. https://www.oecd.org/daf/fin/financial-markets/48892010.pdf

[25] OECD, Recommendation of the Council on Consumer Protection in the field of Consumer Credit, OECD/LEGAL/0453; Complaints Handling and Redress Recommendation.

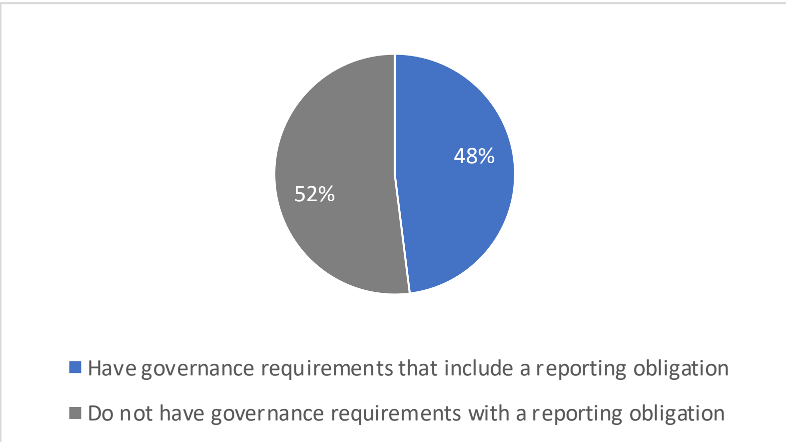
5.4 Reporting obligations

Key points

- About half the respondents indicated that their product governance requirements include obligations on providers to notify the regulator or supervisor of misconduct relating to financial product governance.
- Where this is not a requirement, respondents have alternative measures in place, such as regular meetings with product issuers to discuss misconduct identified in the market.

About half the respondents have product governance rules that require providers to notify the regulator or supervisor of misconduct relating to financial product governance (see Figure 16).

Figure 16. Proportion of respondents with product governance requirements that include a reporting obligation



The survey responses show two alternative approaches to informing regulators about provider misconduct when launching new products or services:

- placing a reporting obligation on financial providers; and/or
- taking preventive measures to protect the interests of consumers and indirectly support market stability.

In jurisdictions that have a reporting obligation, providers must send periodical reports to regulators about complaints and their findings. The timing of reporting varies from as soon as practicable after becoming aware of a significant breach (Hong Kong) to mid-year or annual reporting on findings during the period analysed. Reports may include specific cases of misconduct related to management of the product cycle (Peru) and reporting of embezzlement and fraud (Israel).

Many respondents have a range of strategies in place, from using tools to monitor and identify product misconduct, to holding regular meetings with supervised entities to increase understanding of their products (Brazil and Portugal).

The lack of a reporting obligation does not preclude jurisdictions from requiring firms to notify the supervisor on an ad hoc basis about misconduct relating to product governance. For example:

- Supervised entities are given a grace period to report to the supervisors about errors that have not been fully resolved (Ireland).
- Distributors must promptly inform suppliers of problems relating to product features, product information or the target market when offering and selling products (Spain).

Case studies

Brazil

The Central Bank of Brazil monitors customers' complaints against supervised entities regarding compliance with regulations. Customers can make a complaint against an institution directly to the Central Bank, which requires a response from the institution to it. If the complaint involves a regulatory infraction, it is considered well founded and will feed the ranking of institution with higher complaint rates. Each month, the Central Bank publishes on its website this ranking. In addition, it has access to information collected by the Ombudsman about supervised entities.

The Central Bank verifies the compliance of products and services with the rules in force, especially those related to transparency and product suitability. To do this, the bank:

- holds regular meetings with financial institutions to increase its understanding of their products;
- analyses policies used for offering, selling and contracting for products;
- verifies the screens and steps shown to customers when offering and contracting for products online;
- evaluates institutions' understanding of customer demands, including complaints and resolution of root causes; and
- evaluates the governance structure, including audit and internal control divisions and the commitment of the senior management to analysing the relevant theme books and documents or other articles.

India

Adherence to guidance on product governance is monitored by the Reserve Bank of India through supervisory visits and incognito visits to branches and by analysing complaints received by the Banking Ombudsman and the Reserve Bank.

Ireland

The EBA Guidelines on Product Oversight and Governance do not include a requirement to notify central banks of misconduct relating to product governance requirements. In Ireland, if an error which affects consumers has not been fully resolved within 40 business days of when the error was first discovered, a regulated entity must inform the Central Bank, on paper or on another durable medium, within 5 business days of that deadline.

Israel

A banking corporation must send to the Bank of Israel's Banking Supervision Department every half-year a report on the handling of complaints, including material deficiencies found and how they were handled, in a form proposed by the Supervisor of Banks. The duty includes reporting of embezzlement and fraud.

6. Supervisory tools and product governance

This chapter provides information about how regulators approach product governance requirements in their jurisdiction. It identifies different enforcement powers and supervisory approaches used to achieve better outcomes for consumers.

Supervisory tools are vested in entities that take on different forms in different jurisdictions: for example, ministry of finance, central bank or monetary authority, supervisor of a specific market based on traditional activities of the financial system, or an integrated supervisor.

In countries where there are several different supervisors of specific markets, information-sharing makes it possible to address systemic challenges for consumer protection and thus compensate for decentralised supervision. In other countries, enforcement powers for traditional banking products (e.g. credit), insurance, mutual funds or securities are centralised within a single supervisor.

Depending on the country and its centralisation of supervisory powers, the governance requirements for financial products are based on different tools. These tools include laws, guidelines (risk-based approach), regulations (rules-based approach) or guidance notes which cover a variety of subjects such as corporate culture, sound practices or specific expectations for financial products. In various jurisdictions, product coverage is total, partial or absent.

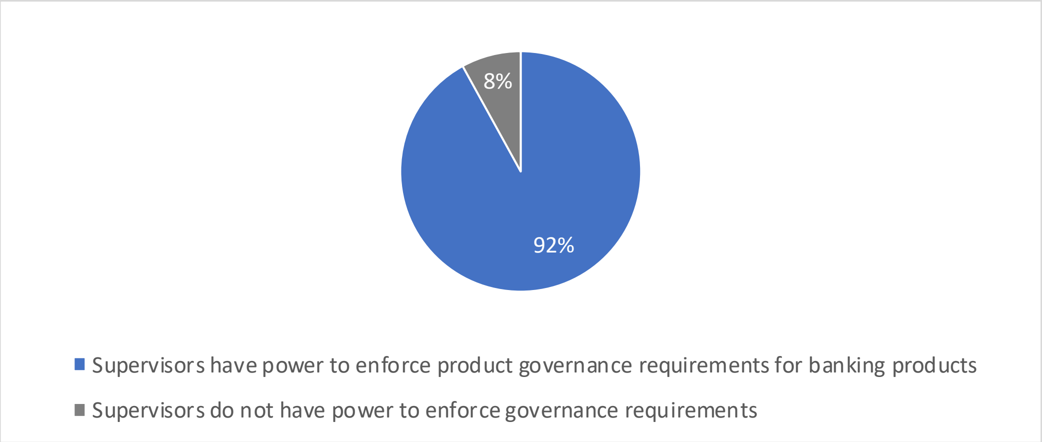
6.1 Enforcement powers for supervision of banking products

Key points

- The vast majority of survey respondents have powers to enforce product governance requirements for banking products in some way.
- Enforcement is designed to align compliance with the expectations of the jurisdiction.
- Supervisors rely on both information from external sources (e.g. complaints) and internal analysis when deciding whether to enforce product governance requirements.

Almost all survey respondents reported that they have powers to enforce product governance requirements for banking products (see Figure 17).

Figure 17. Proportion of respondents with power to enforce product governance requirements for banking products



Supervisors use a multitude of powers which are mainly based on their approach to market supervision and are exercised by incentive-based or coercive means. These consumer protection strategies gradually transform the behaviour of stakeholders. They are directed at both the firms and their employees and, in more serious cases, require them to change their business practices.

The range of tools for aligning compliance with expectations is both wide and specific to the jurisdiction. At one end of the spectrum are a few supervisors who have no specific powers and therefore no basis to address practices that are harmful to consumers. At the other end are more radical tools such as the power to ban products in specific circumstances.

Additional approaches noted by respondents include issuing recommendations designed to address behavioural and cultural issues, providing public warnings and issuing fines, each of which could affect stakeholder revenues. Other respondents have powers to proceed administrative proceedings, implement partial activity restrictions and even criminal penalties.

Decision-making process in taking enforcement action

Complaints and analysis are the main means used by supervisors to identify financial products and distribution channels that may be resulting in poor outcomes for consumers.

Information sources used to identify deviations from regulations can be external to the supervisor or internal.

External sources may include customer complaints, market trends, whistleblowing programs and mystery shopping. In addition, public information such as financial reports, advertisements and press reviews are analysed. In some jurisdictions social media monitoring is used.

Internal sources usually involve work carried out by the supervisor, with or without participation of the regulated firms. Examples include investigations, on-site supervision, the analysis of audit reports and thematic industry reviews. Many supervisors carry out analysis using information from a variety of sources.

Risk indicators considered may include the volume of transactions or the duration of a product, a change in the distribution network or the marketing of a new product. Some jurisdictions have risk indicators to inform decision making.

To make enforcement decisions about intermediaries, Italy is currently developing a Consumer Protection Assessment model aimed at analysing the intermediary's behaviour and policies. The model evaluates the consumer risk deriving from the intermediary's activity by analysing a set of indicators such as products sold, sources of income, distribution and sales policies, and consumer complaints.

Enforcement decisions depend to a large extent on approaches available in applying the regulations (incentive-based or coercive) and the severity of the possible offences.

6.2 Oversight tools and practices for supervision of banking products

Key point

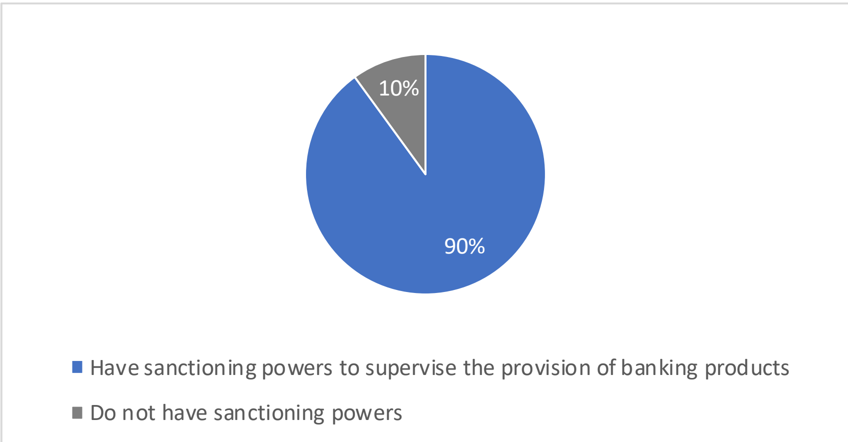
- Supervisory tools are varied; they include risk-based approaches as well as enforcement powers.

All jurisdictions have a broad range of oversight tools and practices to supervise the provision of banking products.

The number of oversight tools and practices available ranges from 3 of the 11 categories in the survey to all 11, with an average of approximately 7 oversight tools or practices used by each respondent.

Almost all respondents have sanctioning powers, such as punitive administrative processes and notices of violation (see Figure 18).

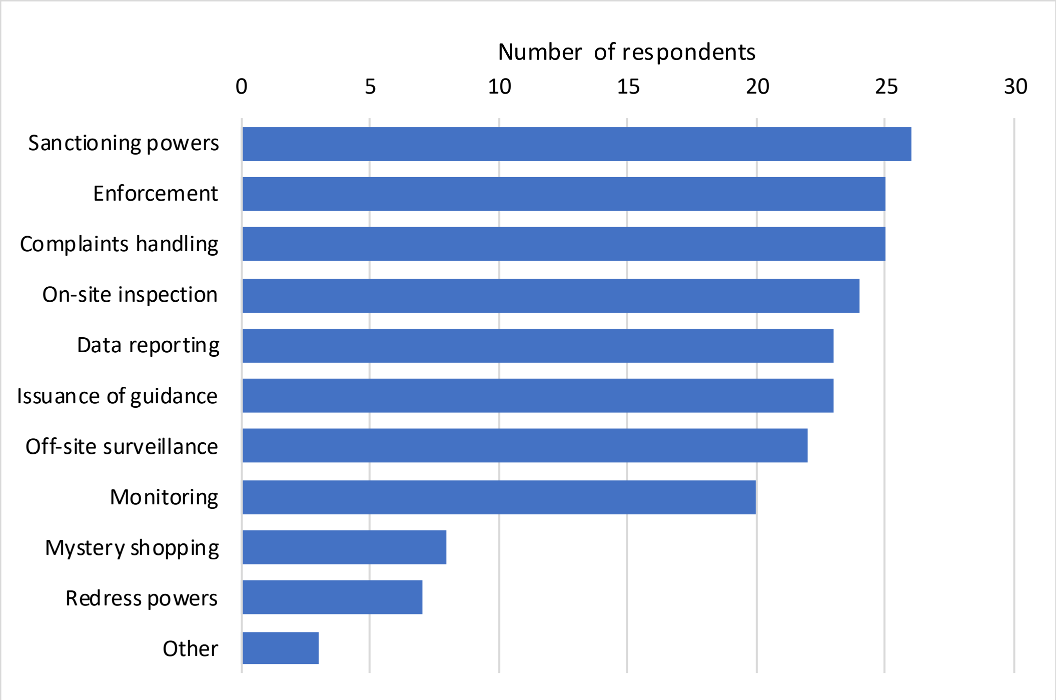
Figure 18. Proportion of respondents with sanctioning powers to supervise the provision of banking products



Sanctioning powers was the most commonly cited tool used by respondents (see Figure 19). Enforcement powers (e.g. issue warnings) and complaints handling were also quite common, as well as on-site inspections, data reporting and issuance of guidelines or best practices.

Fewer jurisdictions have the power to use mystery shopping as an oversight tool, and redress powers. One jurisdiction (India) also stated that customer complaints sent to the Ombudsman are used as a supervisory tool, along with suggestions from consumer rights associations.

Figure 19. Number of respondents that use each oversight tool/practice



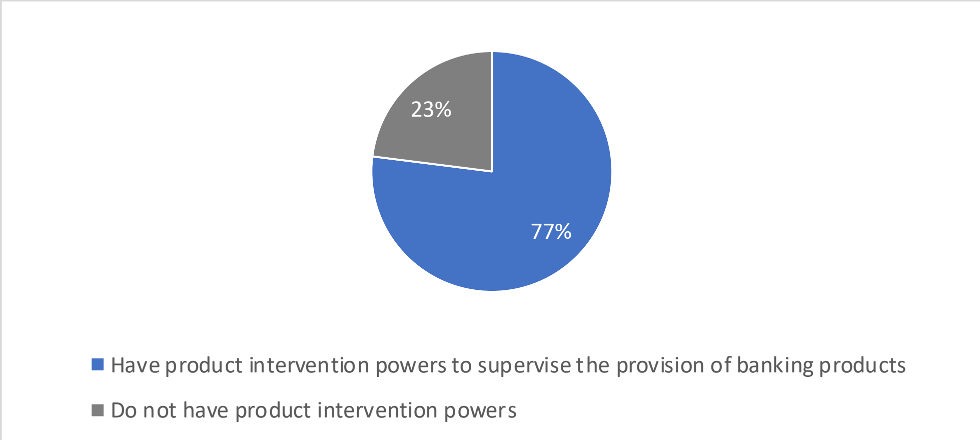
Each category of tool can be implemented and used differently, according to each supervisor's practice. For example, in Germany, formal enforcement powers or sanctions are only applied to serious and continuous breaches of the law. Less serious allegations of non-compliance are informally investigated and financial services firms are encouraged to change their behaviour.

Israel follows an early-action approach, detecting deficiencies before they develop into significant risks. The detected deficiencies are communicated to the bank's management and directors in an ongoing manner, avoiding the need for sanctions.

Product intervention powers

About three-quarters of respondents have product intervention powers to supervise the provision of banking products (see Figure 20).

Figure 20. Proportion of respondents with product intervention powers



Most respondents have several methods of product intervention within the market. They can intervene in or prohibit the sale of a particular product through particular channels or ban the product from the market. Furthermore, several respondents have the power to directly intervene in the design of a financial product or modify features of a product.

Respondents that do not have product intervention powers highlighted that respective regulators have general oversight powers to evaluate non-compliance with product standards and address issues with the firm itself. Such rectification powers include preventing non-compliance, asking firms to revoke certain conditions within product contracts and asking firms to modify product advertisements.

Various respondents have considered adopting product intervention policies. However, they noted that it is the responsibility of the firm to design and market its products in accordance with the codes that exist in each jurisdiction. Product intervention is typically a last-resort policy. Also, there are instances where the product intervention powers in place do not enable the regulator to intervene in the design and distribution of products.

Case studies

Australia

The product intervention power enables the regulator to intervene where a product causes significant consumer detriment or is likely to result in significant consumer detriment. ASIC also has the power to mandate product warnings, alter a product or product feature and, in some extreme circumstances, ban a financial product from being provided to consumers.

Czech Republic

The Ministry of Finance can suggest changes, make comments, require explanations, etc., on contractual terms where applicable.

The Czech National Bank has the power to intervene, including the power to prohibit the sale of particular financial products.

European Union

The Markets in Financial Instruments Regulation[26] gives national authorities the power to prohibit or restrict the marketing, distribution or sale of certain financial instruments or structured deposits.

Italy

Bank of Italy has the power to adopt injunctive measures such as the power to:

- require persons who carry out transactions and provide banking products to refrain from continuing the activity, including in specific areas or branches, and require that sums unduly received be reimbursed;
- prohibit specific forms of offer, promotion or conclusion of contracts related to banking products;
- temporarily suspend, for a period of no more than ninety days, activities referred to in a) and b) where it is a matter of particular urgency.

Mauritius

The Banking Act and the Guideline on Control of Advertisements require financial institutions to submit any advertisements related to deposits to the central bank. The Bank of Mauritius can ask an institution to withdraw or modify the advertisement if it is deemed to be misleading. Institutions are specifically required to undertake a risk assessment before the launch of a new product, business practice, delivery mechanism or technology, and to take appropriate measures to manage and mitigate the risks identified.

Portugal

According to the Legal Framework of Credit Institutions and Financial Companies, the Central Bank of Portugal has the power to suspend the selling of deposits and credit products whenever financial companies have not developed or applied an effective product approval process or that otherwise fail to comply with rules on product oversight and governance and there is a risk that such omission would seriously jeopardize the interests of bank customers.

Policy rationale

Similar themes for the policy rationale of product intervention powers were identified across respondents who have these powers in place.

Product intervention powers are designed to mitigate potential consumer detriment caused by poor conduct in the provision of a financial product through the monitoring of products to ensure that outcomes meet the principles of fairness and suitability. The key themes include integrity, prudence, professional competence and fair business practices by firms to ensure that the best interests of consumers are met.

Product intervention powers also provide for financial system stability, market integrity and the mitigation of potential risks. These include but are not limited to authorised deposit-

[26] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. https://ec.europa.eu/info/law/markets-financial-instruments-mifir-regulation-eu-no-600-2014_en.

taking institutions, over-the-counter markets and securities markets. Financial system stability is important in maintaining relationships between firms and customers as well as reinforcing public confidence in the financial system. In turn, public confidence can influence strong competition within the economy and ensure best practices by market participants.

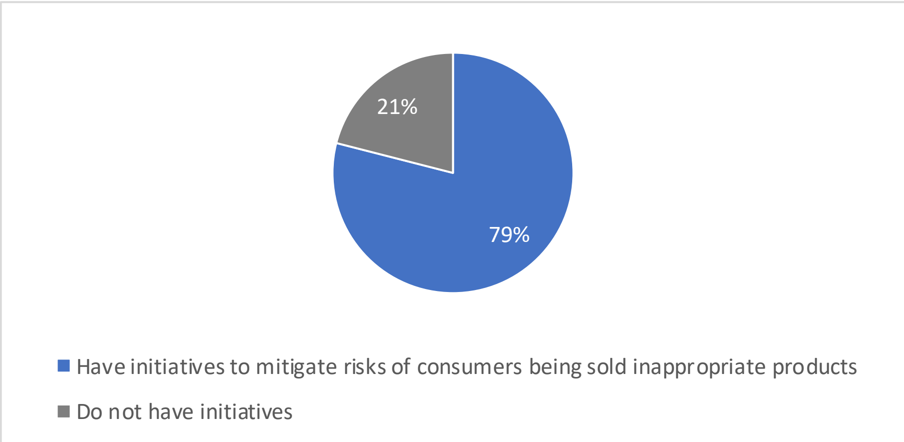
6.3 Initiatives to address mis-selling of products generally

Key points

- The vast majority of respondents have initiatives to mitigate risks associated with consumers being sold inappropriate products.
- These initiatives include publication of codes of conduct, self-regulatory arrangements, supervisory actions, complaints handling, firms' internal control mechanisms and financial literacy initiatives.

Most respondents have initiatives – complementary to product governance requirements – to mitigate the risks associated with consumers being sold inappropriate products (see Figure 21).

Figure 21. Proportion of respondents with initiatives to mitigate risks of consumers being sold inappropriate products



The supervision of the product oversight and governance principles and rules through specific methodological tools mitigates risks related with mis-selling banking products.

Some respondents develop and publish codes of conduct, which set out principles that the industry should follow in relation to product oversight and governance with the aim of preventing the sale of inappropriate products to consumers.

Financial literacy and provision of information are important to equip consumers with the knowledge required to choose appropriate financial products that best suit their interests. Some supervisors have implemented disclosure initiatives for this purpose. Examples of different approaches to financial education include the production and delivery of resources by central banks, supervisors, regulators and complaints authorities:

- specific websites that provide practical information to consumers on what they need to know before buying a financial product (France and Portugal) and how to make informed choices by comparing market offers (Australia, Italy, Portugal and Spain);
- guides that use simple language to help consumers understand the characteristics of different banking products and make informed choices by comparing market offers (Italy and Portugal);
- social media campaigns to make consumers aware of the risks associated with purchasing inadequate products (Canada); and
- financial education programs to improve financial literacy of specific groups (students, retired people, people in rural areas, etc.) and delivered in person or online (Hong Kong, Mauritius, Peru, Portugal, Russia and Spain).

Case studies

Portugal, Spain, Italy

The EBA Guidelines on Product Oversight and Governance set out requirements for manufacturers and distributors when designing and bringing to market mortgages, personal loans, deposits, payment accounts, payment services and electronic money.

Before the entry into force of the EBA Guidelines, the Central Bank of Portugal issued a Circular-Letter (Circular-Letter no. 69/2016/DSC), through which it recommended all market participants to comply with the EBA Guidelines.

Later, in May 2017, the Central Bank of Portugal carried out a questionnaire addressed to a set of institutions to assess the implementation of the EBA Guidelines, in particular guidelines 2 and 10 on internal procedures related to the internal control functions of manufacturers and the governance of retail banking product distributors. Following this exercise, the Central Bank of Portugal issued a set of good practices to serve as a reference for other institutions within the scope of the full implementation of the Guidelines. To ensure level playing field among institutions, the good practices identified were communicated to the market by means of a Circular-Letter.

Banco de España has been promoting meetings with the industry to promote smooth compliance with the EBA Guidelines. Its supervisory actions have been focused on reviewing specific products, such as auto loans, revolving credit cards and bank accounts marketed through digital channels.

Bank of Italy has mandated that regulated entities should have product oversight and governance processes that apply for all products offered to consumers and other retail customers (including sole traders and microenterprises). This requirement followed a cost-benefit analysis finding this extension provided benefits to all relevant stakeholders. The new provisions apply to new products and products substantially changed.

Ireland

The Central Bank of Ireland launched the Consumer Protection Risk Assessment model in 2017. The model established a new and more intrusive approach for supervisory assessments of regulated firms in relation to risk management of conduct and consumer protection. The publication of this model followed a cross-sector pilot exercise in a limited number of banks, insurance and investment firms in 2016.

The Consumer Protection Risk Assessment model helps supervisors assess how banks are or are not creating a consumer-focused culture. It details what is expected of firms throughout the product life cycle. Obligations on regulated entities to gather enough information from the consumer and to conduct appropriate fact-finds before offering, recommending, arranging or providing a product or service to the consumer are verified to determine whether the product offered is the most appropriate.

6.4 Challenges in supervision of governance for banking products

Key points

- Key challenges in delivering product oversight include the lack of legislative power to prevent harm or to achieve compensation for consumers, the number and complexity of financial products, and the pace of innovation in financial technology.
- Testing the effect of existing law, legislative development, cooperation and knowledge sharing between supervisors, and the professional development of staff are important mechanisms to address known challenges.

Lack of legislative power to intervene

One of the main difficulties reported by supervisors is their limited power to intervene in a pre-emptive way to address issues associated with product oversight and prevent consumer harm or a lack of clarity of the law (since most supervisors are not involved in the legislative process). For some respondents, the number and complexity of financial products and the rate of financial technology innovation pose significant challenges. Improving organisational culture to ensure that products are properly aligned with consumer objectives is an ongoing challenge.

Limited powers, a lack of clarity in the law or the mandate of a statutory authority, and conflicts between financial stability and market conduct mandates were cited as challenges in many jurisdictions (Chile, Czech Republic, Germany, Ireland, Netherlands and Peru). In some jurisdictions the supervisor has oversight of the entity that provides the financial product, but not over the products themselves (Czech Republic and Germany). This form of supervision does not extend to the relationship between the supervised entity and the consumer. Because of this, actions are generally ex post, and any possible compensation for damage caused by breaches of the law must be processed through the courts.

The Central Bank of Ireland stated that it does not have a role in product approval; this means that potential intervention occurs at a later stage, once it is made aware of products being (potentially) mis-sold.

In these cases, it is limitations of legislation that prevents supervisors from acting pre-emptively. Usually they may only act where there is a breach of consumer protection laws or actual (rather than potential for) consumer detriment, relating to supervised entities within their competences and functions. When there is a dispute between supervised entities and customers and it is not possible to reach an agreement, judicial or other arbitration may be needed.

Product complexity and technological innovation

For some respondents the large number and complexity of banking products and the volume of individual transactions, along with the pace of change, particularly in technological innovation, pose significant difficulties in supervising banking products (Brazil, China, Hong Kong, Italy, Mauritius, Peru and Portugal).

Financial innovation in banking and services products along with the use of new sales channels may hinder the performance of supervisors. The abundance of innovative products with complex characteristics being offered by firms, associated with rapid sales procedures made possible by digital channels, may prevent supervisors from intervening in a timely manner. In some jurisdictions, the complexity may be heightened as banking products can be sold together with other product types (e.g. insurance).

Additionally, continuous product transformation and ongoing digital and technological evolution makes continual monitoring of product suitability to the intended target market a difficult task.

The rapid evolution of technology and its application to financial services (e.g. virtual banks, Open API and online financing) may pose additional challenges and risks to financial consumer protection. These may include inadequate transparency and disclosure of product features and terms and conditions, unclear or complicated rules around liability for losses, lack of clarity on product suitability and the risk of misuse of personal data.

There is the need for supervisors to cooperate in sharing knowledge about the risks associated with financial technological changes and approaches to consumer harm. This challenge can also be addressed by ensuring that adequate training in contemporary technologies is given to supervisory teams.

Consumer understanding, culture and mind-sets

Consumer understanding was identified as an obstacle in relation to regulating banking products. One respondent referred to the difficulty of finding a balance between making sure the consumer is well informed regarding the product's term and conditions and making sure the information is simple and clear (Israel). Another respondent also raised the issue of consumer understanding (India).

One respondent noted that one of the greatest difficulties and challenges is related to culture, reflecting the importance of ensuring that firms' product approval policies comply and are consistent with the risk strategy and appetites of the institution (Spain).

Firms also need to take into consideration the characteristics and objectives of consumers by incorporating their interests into the firms' internal controls and procedures. In the past, banking products have been generally deemed appropriate for all kinds of consumers that have been given appropriate disclosure and this mind-set must change. Firms should consider the needs and objectives of consumers during the design and sale of products, by defining the target market for each product and designing the product to meet those needs.

Case study

European Union

Market monitoring and identification of consumer trends can assist regulators and supervisors to identify future risks. In order to ascertain issues that are relevant from a financial consumer protection perspective, the EBA publishes on a biennial basis a Consumer Trends Report based on a survey of National Competent Authorities from European Union jurisdictions and other relevant stakeholders. The Consumer Trends Report provides information on topical issues that are relevant at European Union level and may deserve initiatives, either at the European Union level or by single jurisdictions.

7. Impacts of organisational culture

The purpose of this chapter is to consider what “good culture” looks like, what drives good culture and how to identify poor culture. The survey findings and case studies demonstrate regulatory and supervisory approaches designed to provide for better organisational culture in financial services firms.

A literature review focusing on culture in financial service firms and drivers of good culture was prepared as part of this project and is available as Annex C to this Report, and published as a companion document.

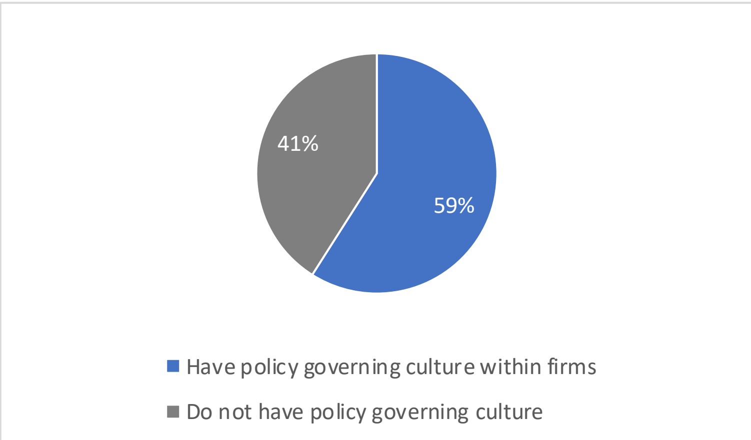
7.1 Legislation or rules governing culture within firms

Key points

- Most respondents have policy designed to provide for good culture in firms, but no specific rules.
- Where there is no specific policy on culture, respondents often rely on consumer outcomes focused legislation and/or prudential regulations to motivate consumer focused ethical behaviour in firms.

Most respondents have policy in their jurisdiction that governs culture within financial services firms (see Figure 22). However, very few respondents highlighted specific legislation, rules or guidance.

Figure 22. Proportion of respondents with policy governing culture within firms



Respondents noted that internal business processes for regulated firms and organisational obligations are the focus of policy governing organisational culture. To achieve this, respondents reported providing guidance and education to firms to develop their understanding of how to improve internal business practices and compliance risk management, to influence good corporate culture within firms.

Where there is no specific policy governing culture, regulators and supervisors often rely on consumer outcome focused legislation to promote best practices and provide fair products for consumers (e.g. fair contractual relationships with consumers). This in turn seeks to ensure that providers and firms act with professionalism and focus on ethical behaviour in the best interests of the consumer.

Other respondents lack specific policies relating to culture in firms. They frequently rely on prudential regulations and firms' internal compliance/rules to promote fairness and efficiency in provision of financial services and products.

Case studies

Germany

Section 25a of Germany's Banking Act stipulates the importance of organizational duties which relate to the culture of a firm. Institutions should have in place proper business practices that ensure compliance with the legal provisions to be observed by the institution. Management boards are responsible for ensuring the institution's proper business organisation and should take the necessary steps to formulate applicable internal guidelines, except where such decisions are made by the supervisory board.

Ireland

The Central Bank of Ireland's Corporate Governance Code for Credit Institutions and Insurance Undertakings 2013 (effective 2015) sets minimum core standards for all credit institutions and insurance undertakings licensed or authorised by the Central Bank. Section 6.3 of the Code states: "The system of governance shall promote and communicate an appropriate risk and compliance culture at all levels of the institution and shall be subject to regular internal review."

Israel

The Bank of Israel's Directive 301/A, on compensation policies, highlights that inappropriate remuneration arrangements create incentives to take exceptional risks that can undermine the financial soundness of a banking corporation. This directive ensures that remuneration arrangements in a banking corporation are consistent with the risk management policy and the long-term goals of the corporation.

Italy

In Italy, the applicable legislation and regulation does not provide a definition of "culture". However, fairness in contractual relationship is crucial, and in this respect the Bank of Italy is entitled to establish organisational requirements for regulated entities. The Regulation on Transparency and Fairness issued by the Bank of Italy devotes a section to the organisational requirements that regulated entities must comply with. These include:

- establishing policies and processes (e.g. for product oversight and governance, and remuneration of sales staff) that take into account the interests of consumers;
- providing appropriate training to sales staff; and
- establishing complaints handling mechanisms and redress systems, etc.

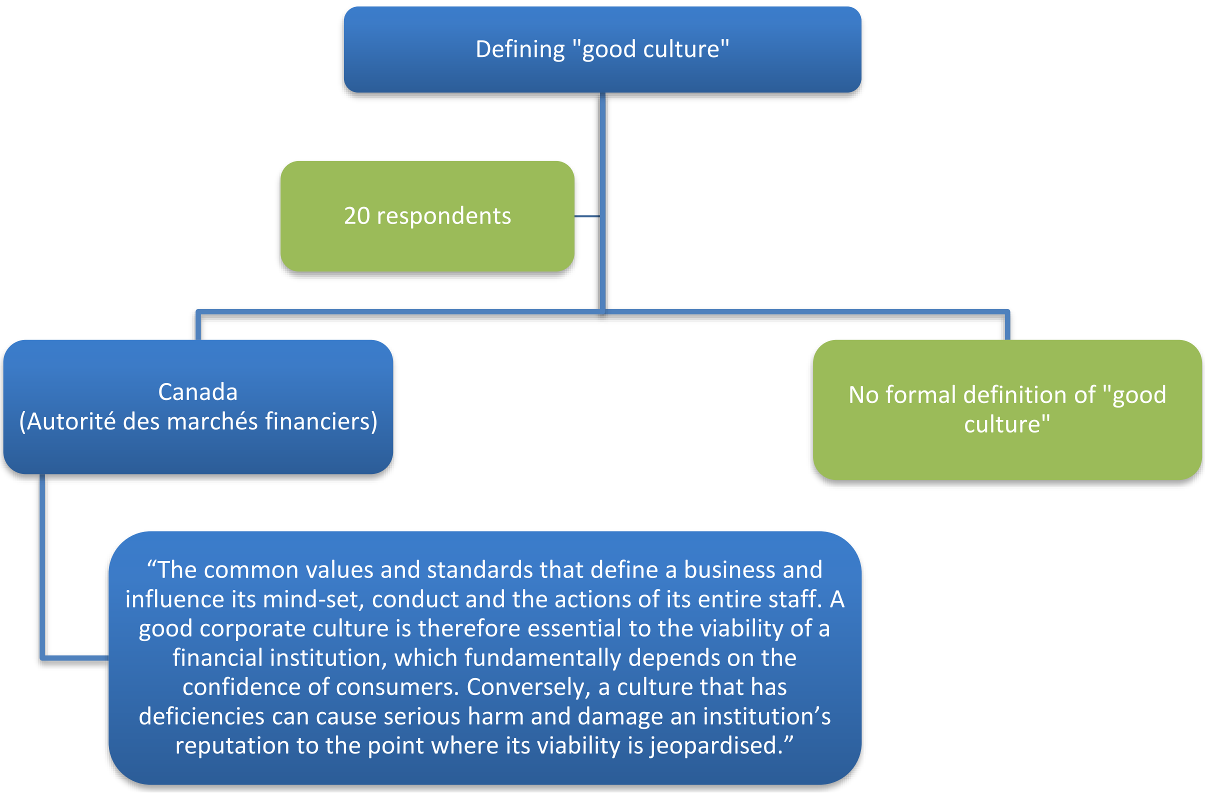
7.2 Defining “good culture”

> ***Key points***
>
> - Only one respondent reported a formal definition of “good culture”.
> - Several respondents see culture as the responsibility of the firm: the firm should ensure there is an appropriate risk management framework in place so that staff act in the interests of the customer and society, and should frame “good culture” through that context.

Definition

Canada is the only respondent that has a formal definition of “good culture” (see Figure 23.

Figure 23. Definition of “good culture”



Other respondents elaborated on their interpretation of good culture. Although good culture is not defined in legislation in these jurisdictions, regulators do expect firms’ management to maintain risk management frameworks that promote better consumer outcomes.

Responsibility for good culture

For several respondents (Germany, Israel, Italy, Mauritius and Peru) good culture is exercised through the appropriate supervision of governance and risk management by firms.

For others (Brazil, Japan and Netherlands) it involves the regulated firms creating a culture in which management ensures that employees are able to act in the interests of customers and society.

7.3 Good culture in product design and distribution

Key points

- Several respondents have established methodical processes to ensure that "good culture" is consistently incorporated in product design.
- Others provided individual examples of "good culture" within product design.

There was a clear distinction between respondents that outlined methodical processes they have established to ensure that good culture is consistent in product design (Canada, Netherlands, Peru and Spain), and respondents that provided individual examples of "good culture" occurring within product design.

Processes used to establish good culture include assessing consumer needs and risks, training sales staff, ensuring adequate disclosure to customers, and monitoring the impact of products on customers after the sale.

Case studies

Canada

The regulator seeks to ensure good culture in product design and distribution though processes such as the following:

- assessing the needs of the various consumer groups;
- analysing the risks to consumers inherent in new products;
- appraising products after their launch to evaluate whether they meet consumers' needs; and
- monitoring distribution channels and their effects on the treatment of customers.

Netherlands

The regulator has designed the Product Approval and Review Process to assess balanced decision-making in the firm and the degree to which the customer's interests are considered. The Product Approval and Review Process assesses four different areas within product design:

- substantiation – the extent to which decisions follow from logical reasoning;
- risks and dilemmas – the degree to which (customer) risks and dilemmas are identified, evaluated and mitigated;

- different perspectives – the involvement of different domains; and
- self-criticism – the degree to which there is a safe culture in which employees feel they can speak up during the product development process and are listened to by management.

Case studies demonstrate the solutions that some respondents have developed to address specific societal and economic problems and thereby ensure that the needs of disadvantaged or excluded customers are accommodated.

Case studies

Brazil

The BCB has introduced a new regulation concerning the opening and closing of bank deposit accounts by electronic means.

Israel

The Bank of Israel, together with the Association of Banks and the Ministry for Social Equality, has been promoting a digital banking training program for older people.

Japan

The Financial Services Authority enables consumers to compare distributors of investment trust in order to increase transparency through the use of common key performance indicators published regularly on its website.

Drivers of good culture

Several key drivers of good culture were identified by 17 respondents.

The most frequently referenced drivers of good culture in regulated firms were:

- focusing on consumer needs; and
- delivering suitable products in a fair and transparent manner.

Other drivers of good culture included:

- management leading by example;
- creating an open and safe culture in which employees are not afraid to speak up and feel they will be listened to; and
- the ways in which employees are compensated, incentivised and remunerated.

7.4 Drivers and examples of poor culture

Key points

- Poor culture within product design and distribution is exemplified by products and services that do not respect current regulations and/or the rights of consumers.
- The most common driver of poor culture identified related to a lack of focus on the consumer. Contributing factors include the prioritisation of sales targets, inappropriate employee incentives and remuneration, and poor leadership.

Poor culture was generally described as being exemplified by products and services that do not respect current regulations and/or the rights of consumers.

Such instances of poor culture in product design can stem from:

- failure to incorporate multiple perspectives;
- a poor product evaluation process;
- failure to highlight product risks; and
- not providing a platform for employees to raise concerns.

Ultimately, while certain products and services can be regarded as examples of poor culture within firms, in reality they stem from a number of factors, such as those outlined above.

Case studies

Brazil

The Central Bank of Brazil identified a product that involved bank customers being offered an investment whose purpose was to save capital for the financial institution and with no real benefit to the consumer.

Italy

The Central Bank of Italy identified a product in which some salary-backed loans were detrimental to the consumer, irrespective of their financial condition. Upfront fees were not refundable in the case of early repayment/renewal of the loan. The distribution of the product in question only served to exacerbate the problem.

While many examples of drivers of poor culture were identified in the responses, the most common drivers identified related to a lack of focus on the consumer. Respondents elaborated that such a lack of consumer focus can arise from factors such as:

- the prioritisation of competition and sales targets;
- employee remuneration structures and incentives;
- poor internal leadership;
- the absence of a safe culture for employees; and
- a lack of self-criticism.

These factors are in addition to inadequate policies and procedures for the management of market conduct.

7.5 Regulatory requirements governing the drivers of culture

Key point

- Respondents indicated that the regulatory requirements governing the drivers of culture aim to identify and address consumer protection risks and organisational risks.

Where respondents indicated that there are regulatory requirements that govern the drivers of culture in their jurisdiction, those requirements were directed at incorporating consumer protection into corporate governance, preventing conflicts of interest and increasing standards of senior accountability in deposit-taking institutions.

Around 40% of respondents do not have any specific regulatory requirements governing the drivers of culture.

Case studies

China

The Guidelines on Protecting Financial Consumers' Rights and Interests in the Banking Sector and other rules on financial consumer protection require banking institutions to integrate consumer protection into corporate governance, enterprise culture and business development strategies and to improve the working mechanisms for consumer protection.

Germany

BaFin has published guidelines for the management of firms in relation to risk management, with instructions requiring management to develop, foster/promote and integrate an appropriate risk culture within any institution and the whole group.

Israel

The Bank of Israel has issued 13 banking conduct directives dealing with corporate governance. These include such matters as limits on transactions with related parties and rotation of sensitive senior position holders to prevent conflicts of interest arising.

Mauritius

Banking laws in Mauritius embeds requirements on, amongst others, the fitness and propriety of senior management, disclosure of interests by board members/senior management, the banks' obligations towards their customers, etc. to drive high standards of risk culture. Further, the Bank of Mauritius has issued guidelines to banks on, inter alia, corporate governance, credit risk management, related party transactions and concentration of risk, etc. which requires the banks to put in place a proper and effective risk management framework.

7.6 Regulatory or supervisory action to address poor culture

Key points

- Respondents provided examples of both formal and informal measures used when poor culture and consumer detriment are identified. The actions undertaken include punitive sanctions, redress to consumers, disciplinary action against staff, and prohibitions on the sales of different products.
- Respondents also reported harm prevention strategies such as issuing warning notices and consumer financial literacy.

Case studies provided by the respondents demonstrate a variety in regulatory and supervisory approaches to combat the effects of poor culture in financial services firms. Regulatory or supervisory actions taken in cases of poor product design and/or inappropriate product distribution include issuing fines, requiring refunds to consumers, requiring staff suspensions and issuing industry-wide letters.

Case studies

Australia

ASIC found that add-on insurance has been widely mis-sold. Insurers agreed to refund AUD 290 million to consumers who were mis-sold add-on insurance in car yards or by lenders. This included people who could not claim on some of their insurance, for example, because they were sold unemployment cover at a time when they were not employed. A deferred sales model, requiring a mandatory four-day pause between the sale of the principle product or service and the add-on insurance product, comes into effect on 5 October 2021.

Canada

The Financial Consumer Agency of Canada has undertaken a series of educational initiatives aimed at consumers to highlight the features of financial and banking products. It also monitors banking products and culture within financial institutions by publishing reports and notifying them of breaches or imposing sanctions where applicable.

Hong Kong

In Hong Kong a bank customer was sold an investment product that was unsuitable for them given their lack of investment experience. The bank staff had little, if any, regard for the customer’s financial circumstances and lack of investment experience; nor did staff adequately explain the risks and penalty of early termination. The Hong Kong Monetary Authority banned the relevant bank staff from selling investment products for a period of three years.

Ireland

Following an inspection of gadget insurance, the Central Bank of Ireland issued a letter to insurers, requiring them to take remedial action to ensure that they were acting in the best interests of consumers. The inspection found that, in certain circumstances, product information provided to consumers was inadequate. Manufacturers and distributors of gadget insurance need to do more to ensure that consumers are made aware of the key product features, benefits, exclusions and total cost as well as how to make a claim.

Peru

Credit cards offered by financial institutions usually enable a line of credit additional to the line of credit belonging to the credit card, commonly called “parallel lines”, which can be used by consumers as an alternative means of financing. They work like an unsecured personal loan, where consumers borrow an amount of money and repay it in monthly instalments. The amount repaid cannot be used by consumers unless they ask for a new parallel line. The line can be used as cash. However, the instrument for the parallel line is often included and charged, in the line of credit belonging to the credit card, therefore paying the credit card also pays the parallel line.

Both the revolving line and parallel line are associated with the same credit card and, in some cases, one consumer may have more than one parallel line. However, even though this has become a complex but frequently used product, there are no specific guidelines and requirements that compel lenders to provide enough information and appropriate contractual documents to consumers. Financial institutions in most cases do not make enough effort to reduce consumers’ misunderstanding of the product’s function. Given the frequency with which this parallel line can be purchased, the fact that there is no cooling-off period between one use and the next, and the ease with which it can be increased, this product can lead to over-indebtedness for some customers.

To address this issue, the Superintendence of Banks, Insurers and Private Pension Funds has passed regulation which establishes that the parallel line must be considered to be non-revolving financing additional, and unrelated, to the line of credit. This implies that both lines are independent; consequently, any supply of parallel lines of credit must comply with market conduct regulation related to the provision of an independent contract and a specific repayment schedule. Under this legislation, credit cards will have only one line of credit and, in order to prevent any type of connection, loans from an institution cannot be paid using lines of credit linked to credit cards issued by the same institution.

Spain

Following the decision of the Supreme Court to invalidate the inclusion of clauses limiting the variation of interest rates on mortgaged loans, the Central Bank of Spain has imposed obligations on financial institutions to redress impacted consumers.

8. Conclusions

Product governance and culture continue to be an important focus for policy makers and legislators around the world seeking to prevent consumer harms by driving consumer-centric decision making.

Good culture in financial firms is not easily articulated and seldom defined either in statute or other regulatory documents. Firms with good culture are those with a focus on consumer needs and the distribution of products in a fair and transparent manner. Respondents reported that internal business controls and processes of regulated firms represent the focus of policy governing organisational culture. Where there is no specific oversight of these policies by supervisors, there is a reliance on consumer outcome focused legislation to ensure firms act with professionalism and focus on ethical behavior in the best interests of the consumer.

Product governance frameworks are intended to drive consumer-centric decision making in the design and sale of financial products. The vast majority of surveyed jurisdictions have some form of legislation, rules or guidance related to financial product governance. Product governance regulations are designed to prevent future harm, including requirements that products be designed to meet the needs of consumers and sold to a target market. Supervisors have been given some specific product governance tools (such as product intervention powers) which can also allow supervisors to address existing harms.

Most respondents have rules that require that a target market is defined for banking products to ensure consumer focused design. This is achieved using factors relating to the consumer or the product. Most respondents also enable supervisors to have oversight of firm's internal procedures for product approval.

Consumer financial literacy and disclosure requirements continue to be important to assist consumers in making informed decisions, but the increasing complexity of financial products mean product governance requirements are an important shift of obligations from the consumer to financial firms to align appropriate products to the needs and characteristics of the consumer.

Recent developments in product governance regulation include requirements that specific distribution channels are assessed to determine whether they are appropriate to direct a product to the target market. Further, respondents reported legislative changes to ensure third party providers are responsible for misconduct and mis-selling.

Supervisory tools and decision making vary depending on whether there is a risk based or rules-based approach to product governance. Tools used by regulators to drive better outcomes include the use of complaint information, inspections and data reporting. Most respondents reported that they have enforcement and sanctioning powers.

Respondents reported that challenges in delivering product governance include a lack of legislative power to intervene in a pre-emptive way. Market related challenges include the complexity of financial products, and the pace of technological innovation and organisational culture.

9. Areas for future consideration

This section sets out areas for future work for consideration by FinCoNet and Task Force Members and other interested stakeholders arising from the analysis and conclusions in the report.

Better understanding of culture and how to improve it

Supervisory authorities should aim to develop a shared understanding on what good culture is and how to use supervisory tools to drive better culture in financial services firms. More could be done to better understand which internal processes in firms are most effective in driving good culture, how to measure those drivers and how regulatory or supervisory tools (including SupTech) could be better used to drive good culture and good consumer outcomes.

Credit and banking product sales practices – measures to align consumers with products that meet their needs, interests and objectives

Effective governance of distribution and sales should align products with consumer's needs, interests and objectives and characteristics. Jurisdictions should share key policies, innovations and supervisory tools used to identify and target poor sales practices, and to drive good sales practices. Subjects that could be explored include identification of risks associated with specific sales channels and how those risks are mitigated, the development and monitoring of incentives, and/or the use of sales and outcomes data (including complaints) to review product design and better target sales through particular channels to provide for better consumer outcomes.

Use of digital tools and behavioural economics to better implement product governance

The development of digital tools is key to the effective implementation of product governance. There are risks and benefits in using information and data about consumer behaviour and behavioural economics to inform product design. Jurisdictions should consider how to monitor the use of technology to ensure the consumer outcomes remain the focus of innovations in this area.

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Annex A. List of responding jurisdictions

Jurisdiction	Organisation
Australia	Australian Securities and Investments Commission
Australia	Australian Treasury
Brazil	Central Bank of Brazil
Brazil	Securities and Exchange Commission
Canada	Financial Consumer Agency of Canada
Chile	Superintendencia de Bancos e Instituciones Financieras
China	China Banking and Insurance Regulatory Commission
Costa Rica	General Superintendence of Financial Institutions
Czech Republic	Ministry of Finance
France	L'Autorité de contrôle prudentiel et de résolution
Germany	Federal Financial Supervisory Authority
Greece	Hellenic Capital Market Commission
Hong Kong	Hong Kong Monetary Authority
India	Reserve Bank of India
Ireland	Central Bank of Ireland
Israel	Bank of Israel Banking Supervision Department
Italy	Bank of Italy
Italy	Commissione nazionale per le società e la Borsa (CONSOB)
Japan	Financial Services Agency
Luxembourg	Commission de Surveillance du Secteur Financier
Mauritius	Bank of Mauritius
Netherlands	Netherlands Authority for the Financial Markets
Peru	Superintendence of Banking Insurance and Private Pension Funds

Portugal	Central Bank of Portugal
Quebec	Autorité des marchés financiers
Turkey	Ministry of Treasury and Finance
Russia	Bank of Russia
Slovak Republic	Ministry of Finance
Spain	Bank of Spain

Annex B. Survey on Financial Product Governance and Culture

Introduction/background

This survey on 'Financial product governance and culture' is an initiative led by the International Financial Consumer Protection Organisation (FinCoNet) in collaboration with the G20/OECD Task Force on Financial Consumer Protection.

FinCoNet is an international organisation of supervisory authorities responsible for financial consumer protection. FinCoNet seeks to enhance the protection of consumers and strengthen consumer confidence by promoting robust and effective supervisory standards and practices and by the sharing of best practices among supervisors. It also seeks to promote fair and transparent market practices and clear disclosure to consumers of financial services. FinCoNet's focus is on banking and credit consumer issues.

The G20/OECD Task Force on Financial Consumer Protection brings together policy makers, including finance ministries, financial regulators, and supervisory authorities as well as international organisations. The Taskforce is engaged in supporting the implementation and development of the G20/OECD High-level Principles on Financial Consumer Protection (including disclosure and transparency, fair treatment of consumers, responsible business conduct of financial services providers and their authorized agents and complaints handling and redress) to assist regulators, supervisors and policy makers enhance financial consumer protection policies and practices.

Recently, new strategies that widen the regulatory focus from point-of-sale to include the entire product life cycle have been developed in many jurisdictions or are under consideration in others. An important part of these developments is increased regulatory attention to the design of financial products. Explicit measures to regulate the governance of financial products have been introduced in a number of jurisdictions, including giving regulators and supervisory authorities the power to intervene in certain circumstances.

Regulators and supervisory authorities need to understand the processes involved in designing, manufacturing and marketing retail financial products as the application of appropriate standards for financial product governance can help to support a 'consumer first' culture among financial product providers.

Purpose of the survey

The survey is designed to collect information from different jurisdictions on the policy, requirements and supervisory approaches relating to financial product governance. It also seeks to gather information on relevant practices, tools and mechanisms for supervisory authorities that promote consumer-focused sales practices and mitigate the risks related to poor product design and poor sales practices.

This survey is being distributed to members of FinCoNet and the G20/OECD Task Force and a comprehensive analysis of the information gathered will be published in a joint report.

Scope of the survey

This survey mainly examines the governance of banking products, specifically, consumer credit, payment products and banking deposits. The survey contains four sections:

- Section A: Financial product governance policy and requirements
- Section B: Risks for consumers associated with poor product design and inappropriate product distribution
- Section C: Supervisory approaches to financial product governance
- Section D: The impact of culture on product design and distribution, and its drivers or causes

Please note that certain questions may be more relevant to other agencies or oversight authorities. Please see instructions for responding to this survey below for more information.

Instructions for responding to this Survey

- Please answer each question by reference to your own jurisdiction.
- If your answer to one of the questions is the same as an answer you have already provided earlier in the survey, please respond with "answer as above in Question #".

- Where questions are more applicable to another agency/authority in your jurisdiction, we would appreciate if respondents could coordinate with the relevant agency/authority to acquire a suitable response and/or provide a link to publicly available information in respect of that other agency's/authority's work, where possible.
- Statistical data, where available, is welcomed.

Should you require any further information or guidance in order to complete the survey, please contact FinCoNet Secretariat, sally.day-hanotiaux@oecd.org or peter.gillich@oecd.org.

Glossary

Term	Definition
Banking deposit products	Amount of money placed into a bank account. The account holder has the right to withdraw the deposited funds, as set forth in the terms and conditions governing the account agreement.
Banking products	For the purposes of this survey banking products means consumer credit products, payment products and banking deposits products.
Consumer	Individuals acting for personal, domestic or household purposes, not business or professional purposes.
Consumer credit products	Credit provided to individuals for personal, domestic or household purposes, and not business or professional purposes. This includes both secured credit (such as mortgage loans and personal loans) and unsecured credit (such as personal loans, lines of credit, credit cards, overdraft facilities and payday lending).
Distributor	A person or entity who offers and/or sells the financial product to consumers. This includes intermediaries and business units of financial product providers that are not involved in the designing the product but are responsible for bringing the product to the market.
Financial product governance	The procedures and controls in place to design, approve, market and manage retail financial products through their life cycle to ensure that they meet, at any time, the interests and objectives of consumers and the relevant regulatory requirements.
Financial product governance requirements	The legal/regulatory and/or supervisory requirements on an entity to implement financial product governance
Financial product provider	An organisation that offers financial products to consumers.
Financial product intervention powers	A power enabling a regulator/supervisor to intervene in the design, sale and/or distribution of a financial product including power(s) to approve a financial product, require modifications or require a financial product to be suspended or withdrawn from sale.
Jurisdiction	The territory over which the respondent's authority is exercised.
Older person(s)	"Older person(s)": there are many different definitions for what constitutes "older person(s)", "senior(s)" or "elderly". For the purposes of this questionnaire, respondents are asked to use either the accepted definition in their jurisdiction if there is one or, if not, to use 60 years or older, which is the age used by the UN
Payment products	Instruments or banking procedures which enable the transfer of funds from a payer to a payee. The payer and the payee can be one and the same person.

Term	Definition
Product life cycle	A number of stages products go through from research, design, manufacture, distribution/sales and ultimately the products decline or removal from the market.
Supervisory approaches and practices	Instruments, procedures and devices used by supervisors to ensure that the supervised entities comply with the applicable regulation and best practices (for example reporting of information, complaints handling, on-site inspections, mystery shopping). The same tool can be implemented and used differently, according to each supervisory authority's practice.
Target market	Group of end consumers for whom the product is designed.

Section A. Financial product governance policy and requirements

This section of the survey aims to better understand the financial product governance requirements in place or under consideration in your jurisdiction.

Questions 1-4 relate to financial product governance requirements generally, i.e. applicable to all financial products, to get an understanding of the broad policy and legal framework. These questions are particularly important where jurisdictions do not distinguish between different types of financial products in their policy and legal framework.

Questions 5 onwards relate to banking products governance, i.e. consumer credit products, payment products and bank deposit products, as these are the main focus of this project.

1. Does your jurisdiction have any legislation, rules or guidance relating to financial product governance?

   ☐ a) Yes

   ☐ b) No (If "No", please continue to question 3)

   If 'Yes' please briefly describe the legislation, rules or guidance relating to financial product governance.

2. What is the policy rationale and objective(s) for the legislation, rules or guidance relating to financial product governance?

3. If you answered 'No' to question 1, are legislation, rules or guidance relating to the financial product governance under consideration in your jurisdiction?

   ☐ a) Yes

   ☐ b) No

If 'Yes' to question 3, please briefly describe what is under consideration.

If "Yes" to question 3, what is the policy rationale and objective(s) for the legislation, rules or guidance under consideration?

4. Does your jurisdiction have any legislation, rules or guidance specifically governing the culture within financial services firms?

☐ a) Yes

☐ b) No

If "Yes", what is the policy rationale and objective(s) for the legislation, rules or guidance specifically governing the culture within financial services firms?

If "No", please provide any relevant additional information.

<u>Note:</u> If you answered 'Yes' to any of the above questions, please continue with the more detailed questions in the rest of the survey. (Please note, that if you answered 'Yes' to question 3, please base your answers to the more detailed questions below on the legislation, rules or guidance under consideration in your jurisdiction).

Financial product governance requirements relating to banking products

The following questions relate to the requirements and policy initiatives regarding financial product governance requirements relating to applicable banking products.

5. Are there financial product governance requirements in your jurisdiction that apply directly to banking products?

☐ a) Yes

☐ b) No (if "No, please continue to question 33)

If “Yes”, please describe the financial product governance requirements that apply to banking products (legislation, rules or guidance).

6. If “Yes” to question 5, are there distinct financial product governance requirements that apply to different banking products, ie consumer credit products, payment products and banking deposit products?

Consumer credit products

☐ a) Yes

☐ b) No

If “Yes” please explain, including the policy rationale

Payment products:

☐ a) Yes

☐ b) No

If “Yes” please explain, including the policy rationale

Banking deposit products

☐ a) Yes

☐ b) No

If “Yes” please explain, including the policy rationale

7. Do oversight bodies in your jurisdiction have financial product intervention powers? That is, the power to intervene directly in the design, sale and/or distribution of financial products or the power to approve financial products, require modifications to or require them to be suspended or withdrawn from sale? (Product intervention powers as distinct from requirements relating to disclosure, advice, business conduct etc.)

☐ a) Yes

☐ b) No

If ‘Yes’ to question 7, please briefly describe when and how this power can be used.

If "No" to question 7, please provide any additional relevant information.

8. If “Yes” to question 7, what is the policy rationale and objective(s) of these product intervention powers?

9. Do the financial product governance requirements apply to all the various distribution channels for banking products, i.e. bank branches, bank intermediaries/agents, online banking, telephone banking, ATMs, e-money, FinTech platforms and point of sale terminals (POS)?

   Select the statement that applies:

   ☐ a) The requirements apply to all distribution channels

   ☐ b) The requirements apply to some distribution channels, but not all

   ☐ c) Other (please explain)

   Please provide any additional relevant information

10. Does your jurisdiction have any legislation, rules or guidance relating to the liability and accountability of third party providers with respect to product design and distribution?

   ☐ a) Yes

   ☐ b) No

If “Yes”, please explain

If "No", please provide any relevant additional information

11. Describe the financial product governance requirements that regulate entities’ internal product approval procedures in relation to banking products.

12. Do financial product governance requirements apply only to new banking products or also to existing products if they change?

☐ a) New products only

☐ b) Existing products that have changed

☐ c) Both new products and existing products that have changed

☐ d) Other (please explain)

Please explain

13. If applicable, describe what is considered a change to an existing financial product in your jurisdiction?

14. Do the financial product governance requirements in your jurisdiction have provisions relating to the target market of a banking product (for example, the type of clients, clients´ knowledge and experience, financial situation or clients’ objectives and needs)?

☐ a) Yes

☐ b) No

If ‘Yes, please describe the factors that are taken into account when defining the target market for banking products.

If "No", please provide any relevant additional information

15. Do the financial product governance requirements in your jurisdiction have provisions relating to banking products being sold to the older persons?

☐ a) Yes

☐ b) No

If ‘Yes, please describe the provisions relating to ageing/elderly consumers and outline the purpose of these provisions.

If "No", please provide any relevant additional information

16. Do the financial product governance requirements include requirements to test financial products before they are sold to assess their potential impact on consumers?

☐ a) Yes

☐ b) No

If ‘Yes’, describe the methodology for financial product testing. In particular, does product testing vary according to the type, risk or complexity of the financial product?

If "No", please provide any relevant additional information

17. If 'Yes' to question 16, are there any financial product governance requirements to evaluate and consider product impact on vulnerable populations (such as older persons)?

☐ a) Yes

☐ b) No

If 'Yes' please explain

If "No", please provide any relevant additional information

18. Do the financial product governance requirements set out specific consumer outcomes that financial products must deliver?

☐ a) Yes

☐ b) No

If 'Yes' please explain

If "No", please provide any relevant additional information

19. Do the financial product governance requirements apply over the entire life cycle of the banking product? For example, is a product monitored after it is launched into the market to determine its impact on consumers?

☐ a) Yes

☐ b) No

If 'Yes', describe who is responsible for monitoring financial products (i.e. provider or regulators or both) and how are financial product governance requirements applied over the life cycle of the financial product.

If "No", please provide any relevant additional information

20. Do financial product governance requirements include restrictions on who can sell banking products?

☐ a) Yes

☐ b) No

If 'Yes', describe these restrictions.

If "No", please provide any relevant additional information

21. Do financial product governance requirements address the issue of financial product providers and/or distributors receiving incentives for selling banking products?

☐ a) Yes

☐ b) No

If 'Yes', describe how the financial product governance requirements addresses issues of providers and/or distributors receiving incentives for selling banking products.

22. Do consumer complaints play a role in your jurisdiction's financial product governance requirements?

☐ a) Yes

☐ b) No

If ‘Yes’ ,please explain how complaints play a role in your jurisdiction’s financial product governance requirements?

If "No", please provide any relevant additional information

23. Do the financial product governance requirements include obligations on providers to notify the regulatory/supervisory entity of misconduct relating to financial product governance requirements)?

☐ a) Yes

☐ b) No

If ‘Yes’, please explain when providers must notify the regulatory/supervisory entity and the process for this.

If "No", please provide any relevant additional information

24. Do the financial product governance requirements establish a cooling-off period before the agreement for a financial product has is concluded, or a period of withdrawal after a consumer has entered into an agreement, for one of these financial products?

☐ a) Yes

☐ b) No

If ‘Yes’, please outline the duration of the periods of cooling-off and/ or withdrawal.

If "No", please provide any relevant additional information

Section B. Risks for consumers associated with poor product design and inappropriate product distribution

The following questions focus on the risks for consumers in relation to consumer credit, payment products and banking deposit products.

25. In the tables below, describe **up to** three risks to consumers associated with mortgage products, consumer credit products, payment products and deposit products. Please note if the risk is specific to a particular distribution channel or channels.

    Where applicable, provide details on how financial product governance requirements assist with addressing each risk, including rules and proposed legislative developments. (Please add rows to the table if there are other risks relevant to the mortgage products).

Product	Description of risk	How do your financial product governance requirements address this risk?
Mortgage products	1.	
	2.	
	3.	
Unsecured personal loans	1.	
	2.	
	3.	
Secured auto-loans	1.	
	2.	
	3.	
Short term high cost credit (e.g. payday lending)	1.	
	2.	
	3.	
Credit cards (continuous credit)	1.	
	2.	
	3.	
Payment products	1.	
	2.	

	3.	
Deposit products	1.	
	2.	
	3.	

26. If possible provide a case study from your jurisdiction that illustrates risks to consumers in relation to banking products. If applicable include how financial product governance regulation successfully addresses these risks or how it fails to do so.

Section C: Supervisory approaches to financial product governance

This section aims to gather information about how each regulator/supervisory authority approaches financial product governance requirements in their jurisdiction. It aims to identify the powers each supervisory authority has and to help understand how these powers are used.

27. Do supervisory authorities in your jurisdiction have the power to enforce financial product governance requirements for banking products?

☐ a) Yes

☐ b) No

If 'Yes', please describe the entity/entities who has/have supervisory authority to enforce financial product governance requirements for banking products.

If "No", please provide any relevant additional information

28. If ‘Yes’ to question 27, please describe the enforcement powers (for example, penalties, issuance of recommendations or specific orders) supervisory authorities have and how they are applied to banking products.

29. How does the supervisory authority decide which financial products and distribution channels to take action on?

30. Are there any initiatives in your jurisdiction (complementary to your financial product governance requirements) to address or mitigate the risks associated with consumers being sold inappropriate products (for example, self-regulatory initiatives, actions encouraging customers to take preventive measures)?

☐ a) Yes

☐ b) No

If ‘Yes’, describe the initiatives that address or mitigate the risks associated with consumers being sold inappropriate products.

If "No", please provide any relevant additional information

31. Which oversight tools and practices are usually adopted to supervise the provision of banking products? Please select all that apply.

☐ a) Issuance of guidelines, best practices, consumer protection principles or guidance notes

☐ b) Off-site surveillance

☐ c) On-site inspection

☐ d) Data reporting

☐ e) Complaints handling

☐ f) Mystery shopping

☐ g) Enforcement (issuance of letters of concern, orders, warnings)

☐ i) Sanctioning powers (punitive administrative processes, notices of violation)

☐ j) Redress powers

☐ k) Monitoring

☐ l) Other (please specify below)

32. What are the challenges and difficulties faced by your supervisory authority in relation to supervising banking products?

Section D: The impact of culture on product design and distribution, and its drivers or causes

This section of the survey aims to collect information on the impact of culture on product design and distribution. It also aims to identify the drivers/causes of good or poor culture.

33. In your jurisdiction, is “good culture” defined?

☐ a) Yes

☐ b) No

If “Yes”, please include the definition below.

If "No", please provide any relevant additional information

34. Please provide example(s) from your jurisdiction of good culture in product design and product distribution, and please elaborate, to the extent possible on why it is considered ‘good’.

35. What are the drivers or causes of your example(s) of good culture (for example, good leadership within an organisation that actively demonstrates ethical behaviour and demands it from employees)?

36. Please provide example(s) from your jurisdiction of poor culture in product design and product distribution, and please elaborate, to the extent possible, on why it is considered ‘poor’.

37. What are the drivers or causes of your example(s) of poor culture (for example, a failure to embed within an organisation an overarching objective, including a clear sense of the organisation’s ethical obligations)? You may also like to consider incentives, the negative effect incentives can have on consumer outcomes, and sanctions where standards are not met.

38. In your jurisdiction are there any regulatory requirements governing the drivers of culture?

39. Describe action taken by your regulator/supervisory authority in relation to poor product design and/or inappropriate product distribution. If possible, provide a relevant case study that illustrates what the consumer risk was in relation to the product(s). Please include the characteristics of the provider and distributor of this poor product or example of poor culture.

Thank you for taking the time to complete this survey.

Annex C. Literature review

A literature review of relevant research reports and other literature relating to culture in financial service firms and drivers of good culture was conducted as part of this project. This is available as Annex C to the Report, and published as a companion document. The literature review can be found here: www.finconet.org/Annex-C-Literature-review_Financial-Product-Governance-Culture.pdf

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