



**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMMITTEE ON FINANCIAL MARKETS**

**G20/OECD TASK FORCE ON FINANCIAL CONSUMER
PROTECTION**

**EFFECTIVE APPROACHES TO SUPPORT THE
IMPLEMENTATION OF THE REMAINING
G20/OECD HIGH-LEVEL PRINCIPLES ON
FINANCIAL CONSUMER PROTECTION**

September 9 2014

As agreed in the Action Plan of the G20/OECD Task Force on Financial Consumer Protection, endorsed by the G20 in 2012, the Task Force has developed the second set of Effective Approaches dealing with six of the ten High-Level Principles on Financial Consumer Protection, endorsed by the G20 Leaders in 2011.

This document contains the sixth final version of the Effective Approaches to Support the Implementation of the remaining G20 High-Level Principles of Financial Consumer Protection. It is based on several meetings of the G20/OECD Task Force on Financial Consumer Protection, subsequent written consultation with member jurisdictions and other relevant international bodies and Standard Setter Bodies (SSB), Vice Chairs, sub-groups and an informal consultation with key stakeholders; including consumer and industry associations. A version was also shared with the OECD Committees on Financial Markets and on Insurance and Private Pensions, under the written process. It is submitted for consideration by the G20 Finance Ministers and Central Bank Governors.

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Introduction

Background

Following the call by the G20 Leaders at the Seoul Summit in November 2010 and the subsequent calls by the G20 Finance Ministers and Central Bank Governors on several occasions, the G20/OECD Task Force on Financial Consumer Protection developed the G20/OECD High-Level Principles on Financial Consumer Protection. The Principles were endorsed by the G20 Leaders at the Cannes Summit in November 2011 and adopted by the OECD Council as a Recommendation in July 2012, thereby expanding the coverage of the principles to include all OECD member countries.

At the Los Cabos Summit in Mexico, June 2012, the G20 Leaders endorsed the Action Plan of the G20/OECD Task Force on Financial Consumer Protection to develop effective approaches to support the implementation of the Principles with an update report on work undertaken submitted by the time of the G20 Leaders St. Petersburg Summit.

In September 2013, the G20 St. Petersburg Declaration stated that the G20 Leaders supported the work done by the G20/OECD Task Force on Financial Consumer Protection on the first set of effective approaches and look forward to the report of the Task Force on the effective approaches to support the remaining High-Level Principles by the time of the G20 Leaders Summit in 2014.

This report on effective approaches is organised around the remaining G20/OECD High-Level Principles on Financial Consumer Protection:

- Legal, Regulatory and Supervisory Framework
- Role of Oversight Bodies
- Equitable and Fair Treatment of Consumers
- Protection of Consumer Assets against Fraud and Misuse
- Protection of Consumer Data and Privacy
- Competition

The Addendum to this report reflects the numerous instruments developed by the OECD/INFE (principles, good practices, guidelines and policy guidance) on the basis of practices implemented (and evaluated) in OECD/INFE member economies and countries which provide a comprehensive set of effective approaches which are fully relevant for the implementation of the High-Level Principle 5 on Financial Education and Awareness. The INFE is also developing further work to facilitate the implementation of the High-level Principles on National Strategies for Financial Education which should offer some further effective and emerging approaches relevant for the principle 5. This document is therefore aimed at providing brief background information on the work developed and on identified effective and emerging approaches to date by the OECD/INFE and OECD bodies in charge of financial education.

Following previous experiences the Task Force decided to organise the work in developing the effective approaches by requesting country representatives from the Task Force to volunteer and take on the leadership role of Vice Chairs for each of the principles under review and interested Task Force

members were asked to participate in sub-groups, to work alongside the Vice-Chairs in the development of effective approaches.¹

The process

The work to develop the effective approaches followed a similar process (a member led exercise) to the one developed for the first set of three priority principles. The development of the effective approaches is based on the analysis of a member's survey, undertaken at the end of 2013 and the beginning of 2014, with responses from twenty-nine G20, FSB and OECD jurisdictions².

This report takes note of the discussions held at during Eleventh, Twelfth and Thirteenth meetings of the G20/OECD Task Force on Financial Consumer Protection on 11 February, 16 April and 20 June 2014, subsequent written consultations with Task force members, the Chair, Vice Chair, sub-groups and the informal consultation with key stakeholders; including consumer and industry associations and additional inputs from various member jurisdictions and other relevant international organisations and Standard Setting Bodies (SSB). In addition, input to the work on developing effective approaches on Competition benefited from a discussion of these issues at the 26 February 2014 meeting of the OECD Competition Committee.

During the process the Vice Chairs, sub-groups and members gave consideration to existing and planned European Union legislative measures in the financial services sector and guidance issued by relevant international Standard Setter Bodies (SSB), and input from other International Organisations.

Effective Approaches

The effective approaches identified are not exhaustive but they do reflect considerations highlighted within the members survey and the following consultations. They represent examples, based on individual jurisdictional initiatives, deliberated and identified, according to the expert opinion of the Vice Chairs, sub-groups and members of the G20/OECD Task Force on Financial Consumer Protection.

The effective approaches are illustrative and non-binding. They serve to inspire and stimulate the implementation of the G20 High-Level Principles, as well as to share lessons learnt and foster new insights on what works well under country-specific and sector relevant circumstances³.

¹ The Task Force representative from the Netherlands acts as the Vice Chair for Principle 1: Legal, Regulatory and Supervisory Framework; working closely with the representative from IOSCO as the Vice Chair for Principle 2: Role of Oversight Bodies. The Task Force representatives from the UK and Spain undertake this role for Principle 3: Equitable and Fair Treatment of Consumers; and the Task Force representative from the UK for Principle 10: Competition. The representative from Italy acts as the Vice Chair for Principle 7: Protection of Consumer Assets against Fraud and Misuse; and Principle 8: Protection of Consumer Data and Privacy.

² The following jurisdictions have completed the members survey and/or provided information on relevant practices; Hungary, Spain, Netherlands, China, Czech Republic, Hong Kong, Ireland, Italy, UK, France, Australia, South Africa, Germany, Belgium, Norway, EU, Turkey, Portugal, Japan, Chile, Brazil, Korea, Switzerland, Luxembourg, Canada, Slovenia, Israel, Mexico and Greece.

³ The text of the report is organised by paragraph number to enable readers to link the effective approaches with the detail information on country specific regulatory and supervisor approaches as outlined in a series of Annexes which will be made available for the G20 Leaders Summit in 2014. This ordering is not intended to indicate, in any way, a hierarchy of significance within the effective approaches.

The effective approaches are of interest across all financial services sectors – including, banking and credit, investment, securities, insurance and pensions.

In developing the effective approaches, the Task Force identified certain **underlying assumptions**. These underlying assumptions refer to statements or norms that have been identified by the Task Force as providing further clarity or explanation to the High-Level Principles.

The Task Force also identified what are termed “**common effective approaches**”. These common effective approaches refer to regulatory, supervisory and self-regulatory measures and practices which have been developed and are considered by the Task Force to effectively implement the key aspects of the G20/OECD High-Level Principles and are consistent with approaches developed by a broader range of jurisdictions.

A further classification was made to identify “**innovative**” or “**emerging effective approaches**”. These are regulatory, supervisory and self-regulatory measures and practices worthy of consideration or interest. They represent either, innovative approaches, undertaking a different, alternative or new approach to implement the key aspects of the G20 High-Level Principle, or emerging approaches, the adoption or the specific use of a certain approach as a consequence of a new or emerging challenge to support key aspects of the G20/OECD High-Level Principle. Innovative and emerging approaches are not representative across a broad range of jurisdictions but instead may be limited to only a few jurisdictions and sometimes are only applied to certain financial services. The Task Force considers that, after taking into account specific national circumstances, these innovative or emerging approaches can be of interest to and prove useful for stakeholders engaged in work to enhance financial consumer protection.

The development of the effective approaches provides policy makers, regulators and supervisors and financial services providers, their authorised agents and consumers, with relevant, practical and evidenced-based examples on how the principles can be implemented, while taking into account different jurisdictional circumstances. In this way, the effective approaches provide a “tool box” on how to enhance financial consumer protection, thereby ensuring that consumers feel capable, knowledgeable, safe and secure in their dealings with financial services providers and their intermediaries and strive to help restore trust and confidence in well-functioning markets for financial products and services.

Inter-relationship

It should also be noted that the High-Level Principle themselves are interconnected as each separate principle is re-enforced by the other principles. For example, actions to enhance disclosure and transparency not only provides consumers with adequate information to make informed financial choices but improved disclosure and transparency can help promote competitive financial markets, by allowing consumers to make comparisons between products and financial providers.

Financial services providers and authorised agents have a responsibility to work in the best interest of their consumers. Ensuring that the remuneration structure for staff is designed in a way to encourage responsible business conduct contributes to equitable, honest and fair treatment of consumers.

To support financial consumer protection, strong and effective legal and judicial or supervisory mechanisms exist to ensure that consumers are protected against financial frauds, abuses and errors. In this context it is important that the regulators/supervisors have a comprehensive understanding of

the types of financial frauds that confront consumers and that they can take effective measures to address them.

Future work

In keeping with the G20 Cannes Summit Declaration, the G20/OECD Task Force on Financial Consumer Protection will continue with an agreed Programme of Work aimed at keeping the effective approaches to support the G20/OECD High-Level Principles updated and relevant, through information sharing and ongoing evidence based research; to report on progress on their implementation to upcoming G20 Summits; to promote global dialogue and outreach and support any future calls made by the G20 in the area of financial consumer protection.

Glossary

Financial Services Providers	Includes all independent entities that provide, or offer, financial products and services in the market place.
Consumer	The role of the consumer is that of a retail consumer rather than high-net worth individuals or institutions
Authorised Agents	Mean third parties acting for the FSP or in an independent capacity. They include any agents (tied and independent) brokers, advisors and intermediaries
Unclaimed Assets	Assets that have not been claimed for a significant period of time by their owner/beneficiary, who is apparently unaware of their existence.
Consumer Law	An area of law that regulates private law relationships between individual consumers and the businesses that sells those goods and services.
Behavioural Economics	Uses insights from psychology to explain why people behave the way they do.
Credit reporting system⁴	Comprise of the institutions, individuals, rules, procedures, standards and technology that enable information flows relevant to making decisions related to credit and loan agreements.
Credit registry	Model of credit information exchange whose main objectives are assisting bank supervision and enabling data access to regulated financial institutions to improve the quality of their credit portfolios.
Credit bureau	Model of credit information exchange whose main objectives are assisting bank supervision and enabling data access to regulated financial institutions to improve the quality of their credit portfolios.
Negative data	Negative data consist of statements about defaults or arrears and bankruptcies. They may also include statements about lawsuits, liens and judgments that are obtained from courts or other official sources
Positive Data	Information that covers facts of contractually compliant behaviour. It includes detailed statements about outstanding credit, amount of loans, repayment patterns, assets and liabilities, as well as guarantees and/or collateral. The extent to which positive information is collected typically depends on national legislation, including the data protection regime.

⁴ http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit_Reporting_text.pdf
http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit_Reporting_text.pdf
http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit_Reporting_text.pdf

Principle 1: Legal, Regulatory and Supervisory Framework

Underlying Assumptions

1. Financial consumer protection is embedded in laws, acts and regulations or codes of conduct.
2. An effective system for financial consumer protection regulation and supervision ensures that there are clear roles, responsibilities and objectives set for each authority involved.
3. Legal frameworks provide mandates for specific regulatory and supervisory authorities with the powers to conduct financial consumer protection regulation and supervision, to monitor compliance, undertake enforcement on financial consumer protection issues when deemed necessary and to deal with public complaints.
4. Jurisdictions have adopted different approaches to developing a regulatory and supervisory infrastructure to support financial consumer protection. Financial consumer protection may fall under the responsibility of one or multiple agencies or ministries.
5. When designing and implementing an appropriate framework for financial consumer protection, regulators and supervisors take into account the nature, scale and complexity of the market and the specificities of the different market players.
6. Financial consumer protection frameworks establish regulatory and supervisory objectives while recognising that it is not always possible to list all of the circumstances in which the regulators and/or supervisor may be called upon to act in pursuit of these objectives.
7. Governmental involvement can vary across financial consumer protection frameworks. Governmental institutions are generally responsible for the development of the legal framework with regard to financial consumer protection, the delegation of regulatory/supervisory responsibility to agencies and the communication of policy initiatives to relevant stakeholders. Alternatively, in some jurisdictions, the Executive and/or Legislative institutions can drive and coordinate specific consumer protection subjects (e.g. financial education).
8. External stakeholders can provide a variety of data sources relevant to financial consumer protection, including information gained from industry associations, complaints handling schemes; consumer groups the general public and academic researchers.
9. Coordination and cooperation across regulatory and supervisory authorities within and beyond the financial sector, and across industry, consumer groups and civil society can improve, and ensure adaptability of financial consumer protection.

Key Themes

1.1 Institutional Arrangements

Financial consumer protection should be an integral part of the legal, regulatory and supervisory framework, and should reflect the diversity of national circumstances and global market and regulatory developments within the financial sector.

Effective Approaches

Common

1.1.1 Legal and Regulatory Approaches to ensure Financial Consumer Protection

10. The legal framework provides clear financial consumer protection rules enshrined in national laws, acts, regulations and/or statutory or voluntary codes.

11. Financial consumer protection legislation can cover but is not limited to the following areas; institutional frameworks; the role of oversight bodies; financial literacy/education; access to basic financial products and services; disclosure requirements and transparency; responsible business conduct; responsible lending practices; data protection and privacy; effective resolution schemes and complaint handling mechanisms.

12. Financial consumer protection laws, acts and statutory or voluntary codes can have a variety of characteristics. For example, there are:

- General consumer protection laws which are applicable across financial services sectors, or specific financial consumer protection laws or a combination of both.
- Codes of conduct (statutory or voluntary) set by industry organisations.
- Cross-sectoral laws contain provisions which apply to all participants of, and activities on, the financial markets and can be complemented by supporting laws in the specific sector.
- Sectoral laws containing rules which apply to the participants of, and activities in, specific sectors. For example, there is a sectoral law for the insurance sector, banking sector, pension sector and the securities sector.
- Principle based or rule based approach or a combination of both:
 - The principle based approach relies on high level guidance rather than on detailed rules. It focuses on the intent of guidance and is designed to be robust, flexible and able to cope with a rapidly changing business environment.
 - The rules based approach provides prescriptive rules or guidance on how objectives should be achieved by the financial services providers. Implementing compliance and enforcement may be more straightforward due to the specificity of rules.

13. Applicable financial consumer protection legislation can be instituted and be supportive at various levels. For example:

- On a supranational level.
- On a national level and where national laws can complement or be complemented by the supranational laws.
- Legislation is developed in a centralised way by national authorities.
- Legislation is decentralised at the national level.
- Or the responsibility for developing financial consumer protection legislation is shared.

14. The development of new financial consumer protection legal or regulatory frameworks can be based on regulatory gap analysis, a process that will identify gaps, overlaps or inconsistencies in the

existing framework. Regulatory gaps that may appear following international developments are identified and can be addressed through participation in relevant international forums.

Innovative/emerging

15. Financial consumer protection frameworks take into consideration the knowledge, experience and understanding of financial products by consumers and consumer segments.

16. Financial consumer protection regulation and supervision is organised and applicable across all financial services sectors; alternatively, the same principles apply across different sectors although detailed rules may vary.

17. To enhance financial consumer protection, financial services providers and their authorised agents can agree to sign up to a consumer protection charter (for example: to treat consumers fairly, which demonstrates the industry's commitment to financial consumer protection).

1.1.2 Agencies responsible for and involved in Financial Consumer Protection

Effective Approaches

Common

18. The institutional framework can consist of several approaches:

- Integrated (single or universal) approach: where one agency has the responsibility for all financial regulatory/supervisory activities integrating both prudential and conduct supervision functions across all financial services sectors.
- Twin peaks approach: where one agency is in charge of prudential regulation across financial sectors and another agency is responsible for undertaking business conduct regulation across financial sectors. Thereby, there are two sectorally integrated agencies, each with different functions.
- Institutional or sectoral approach: where a single agency is responsible for the regulation/supervision of a type of institution or sector (e.g. banking, insurance and securities) from a prudential and business conduct perspective.
- Hybrid twin peaks models: where there is a combination of approaches (e.g. one agency conducts prudential and business conduct regulation of two sectors).

19. Other Governmental or public agencies involved in financial consumer protection generally include:

- General consumer protection agencies, with a responsibility for the provision of consumer protection related information and education.
- General competition authorities.
- Data protection agencies.
- Ombudsman and alternative dispute resolution schemes, with a responsibility for independent complaints handling and redress in the financial sector.

20. To ensure that financial consumer protection (collective and/or individual) is at the centre of financial regulation and supervision, several approaches can be identified:

- Regulators and/or supervisors establish individual units with adequate resources, to focus on and have responsibility for financial consumer protection issues.
- The founding statute of an agency or agencies or the law list financial consumer protection as one of the main strategic objectives of that agency or agencies.
- There is a sound legal basis for giving clear explicit mandates to regulators/supervisors.

21. To avoid overlap and gaps in regulatory and supervisory practices between multiple agencies, the following approaches can be considered:

- Respective ordinances delineate clearly the respective powers and functions of the agencies.
- In the case of multiple authorities dealing with complaints handling and investigations, there are structures, rules, agreements in place that indicate the principles and mechanisms to assign and reassign responsibilities, and to exchange information and documentation.
- In the case of intermediaries that may offer several types of financial products, either as a secondary or as a primary business activity, their primary regulator develops adequate coordination mechanisms with other financial regulators, in order to facilitate exchange of information on market developments, emerging risks, and common regulatory and supervisory issues.
- There are bilateral memoranda of understanding (MOUs) or cooperation agreements that outline the basic framework for policy and operational coordination and information exchange between authorities responsible for supervising consumer protection in different financial sectors, especially where there are regulatory overlaps.
- Organisations regularly exchange views and opinions in order to resolve gaps or overlaps in regulatory/supervisory practices.

1.1.3 Approaches to identify and address emerging risks

Effective Approaches

Common

22. Risk identification can be addressed within and between agencies, and where stakeholders can work in cooperation to identify risks, for example through:

- Cooperation and periodic consultations with external stakeholders, including consumer organisations, industry associations and trade bodies, complaints handling schemes operators and the general public.
- Cooperative arrangements between different regulators and supervisors to ensure effectiveness throughout the risk mitigation process, including the following:
 - a process that has been put in place to adequately follow-up on observed risks.

- a dedicated unit or team with adequate resources to research on market developments and emerging risks, which can be elaborated through the publication of policy documents identifying cross-sectoral and emerging consumer protection issues.

23. Information on emerging risks is collected through various mechanisms:

- There are formal mechanisms in place for financial consumer protection departments to receive information regarding consumer inquiries, complaints and disputes handled by complaints departments or alternative dispute resolution mechanisms, both from within the regulator or supervisor and from other institutions.
- Financial consumer protection regulators and supervisors collect information about unregulated products, firms and markets, as well as financial crimes and frauds, through coordination and communication with non-financial authorities such as fiscal, police and tax authorities.

24. Information is collected from various sources to facilitate the identification of emerging consumer protection risks. These can include the following:

- media reports;
- consumer surveys;
- phone calls received by consumer helplines;
- on-site examinations;
- mystery shopping exercises;
- information from internal and external complaints handling schemes; and
- stakeholder consultation, evidence reports and case studies.

Innovative/emerging

25. Activities to identify risks may include:

- Monitoring social media activity (e.g. blogs, social networks) in addition to traditional media sources.
- Monitoring advertising campaigns to identify changes in business practices and the development of new products (e.g. tracking via a product database of new entrants which may call for a one-off intervention or on-site inspection).
- Using a quantitative system to track specific set of alerts based on, for example, the number, frequency and type of complaints on certain financial institutions, sectors and/or products.

26. A joint cross-sectoral emerging risk committee can be established that follows a set process to review the perimeter of regulation and supervision, specifically focusing on potential vulnerabilities and systemic risks. Such a committee reviews standing papers on domestic and international financial markets and institutions.

27. Research projects are undertaken or commissioned to third parties on relevant topics, including the analysis of revenues data, as reported in the balance sheets and in surveillance data, and surveys on financial services providers' relevant activities, as well as ad hoc surveys on specific topics to identify and understand emerging issues.

28. The formulation of risk assessment models as a compliance tool can help authorities establish relative levels of risk for issues relevant to consumer protection:

- Models may assess individual financial services providers based on items such as market presence, corporate structure, relevant market conduct data and controls.
- Information contained in the model is used internally to help identify, define and weigh risks with respect to various business activities and behaviour patterns of financial services providers. These models help to identify specific issues or financial services providers that have a higher probability of being at odds with a jurisdiction's consumer protection framework. The approach requires a strong understanding of risk drivers across market segments and requires updating to ensure correct surveillance.
- Regular reporting requirements extend to key market conduct indicators, which assist in identifying risks to consumers. A key indicator is the number and type of complaints filed against a financial services provider. Information gathered through measures such as surveys and mystery shopping exercises help to identify risks. In addition, oversight bodies monitor and assess market developments to identify potential future risks.

1.1.4 Approaches to address cross-sectoral financial consumer protection issues

Effective Approaches

Common

29. Regulators and supervisors can undertake an institutional mapping to identify types of financial services providers and products that may not be adequately or clearly covered under the current consumer protection legal and institutional framework, and address those consumer protection gaps through the expansion - or precision - in the scope of existing legislations, and the clear designation of a responsible authority for such providers and products/services.

30. Assignment of roles and responsibilities among financial regulators or supervisors may follow a functional rather than a market or product approach. In such cases, the responsibility for financial consumer protection issues lies within one agency only. This approach can facilitate the development of over-arching and cross-sectoral market conduct regulation/supervision that addresses gaps and overlaps, and promotes the coordination of emerging risks and consumers challenges across financial sectors and where necessary, co-ordination with relevant authorities to deal with cross-cutting consumer protection issues.

1.2 Market Considerations⁵

Regulation should reflect and be proportionate to the characteristics, type, and variety of the financial products and consumers, their rights and responsibilities and be responsive to new products, designs, technologies and delivery mechanisms.⁶ Strong and effective legal and judicial or supervisory mechanisms should exist to protect consumers from and sanction against financial frauds, abuses and errors. Financial services providers and authorised agents⁷ should be appropriately regulated and/or supervised, with account taken of relevant service and sector specific approaches.

Effective Approaches

Common

31. General principles of financial consumer protection are applied consistently across all types of financial services providers which offer similar products and/or services.

32. Platforms are established for the various regulators/supervisors to minimise duplication or gaps in the regulation and supervision of financial services providers and to pay attention to and/or eliminate regulatory arbitrage.

33. In order to be responsive, efficient and cost effective, financial consumer protection regulators and supervisors adopt a risk-based approach where resources are concentrated in areas of high risk to consumers, and is complemented by a problem-solving approach where regulators and supervisors can focus on harmful behaviours, and potential and/or emerging risks that lie within the mission and responsibility of the regulator/supervisor, including when such risks are explicitly addressed in the legal framework.

34. A mix of principles-based and product-specific regulations can help establish a comprehensive consumer protection framework.

35. Product-based approaches to consumer protection regulation or supervision can help to ensure that:

- Products which have similar market functions are subject to the same supervisory and regulatory frameworks; and
- Consumers are granted the same level of protection related to sales practices, product terms and features, irrespective of whether they deal directly with a financial services provider or its authorised agent.

36. Common examples of approaches to product regulation include: restrictions on unilateral contract modifications, bundling of products, variable interest rates, limits on foreign exchange lending, and opt-in requirements for certain product features.

⁵ In the context of the survey the term market is seen in the competitive/economic sense as opposed to trading exchanges.

⁶ Where relevant, appropriate mechanisms should be developed to address new delivery channels for financial services, including through mobile, electronic and branchless distribution of financial services, while preserving their potential benefits for consumers.

⁷ Authorised agents are understood to mean third parties acting for the financial services provider or in an independent capacity. They include any agents (tied and independent agents), brokers, advisors and intermediaries, etc.

37. Financial services providers may be subject to different rules and standards depending on the consumer segments they engage with (e.g. private or corporate consumers, consumers with different experience levels, risk tolerances, financial backgrounds or time horizons.)

38. Regulators and supervisors engage with civil society, including consumer rights groups, for market monitoring purposes including identifying risk and collecting evidence on market misconduct.

Innovative/emerging

39. Regulators and/or supervisors have a mechanism in place to identify and address any gaps to either regulate or supervise new products, technologies or delivery channels.

40. As markets evolve and innovative products are introduced, market conduct rules are adapted to reflect the changing nature of financial markets.

41. Appropriate and effective regulations are in place regarding distance marketing and responsibilities for the content of transmitted information concerning financial services provided by electronic means. To effectively fulfil their market monitoring duties, regulators and supervisors regularly seek to update their supervisory tools, for example, to monitor social media.

42. Regulators and supervisors undertake public awareness campaigns on the risks arising from certain products, for example, non-standard investment products, even if they are not regulated, or technology related issues, including, for example, online trading or peer-to-peer lending.

43. Provision of financial products and services by mass channels (e.g. commercial retail) as well as technological channels receives particular attention from regulators and supervisors.

44. Existing financial consumer protection rules are amended to include an addendum that reflects the delivery of products and services via new channels (e.g. mobile payments for credit and debit cards).

45. Regulators and supervisors ensure that the portability and interoperability of financial products and services help support consumers' ability to freely choose the most appropriate product and service providers for their current needs.

46. To prevent misselling from an online sales platform, regulators and supervisors are equipped with solutions and processes that enable them to screen for potential new and emerging consumer risks.

47. For harmful, unsuitable and/or complex financial retail products, regulators and supervisors have the necessary tools to control or mitigate significant consumer risks, for example, the ability to temporarily limit or suspend the marketing and selling of such products.

1.3 Consultation with External Stakeholders

Relevant non-governmental stakeholders – including industry and consumer organisations, professional bodies and research communities – should be consulted when policies related to financial consumer protection and education are developed. Access of relevant stakeholders and in particular consumer organisations to such processes should be facilitated and enhanced.

Effective Approaches

Common

Consultation processes

48. Policy initiatives of regulators that create or amend consumer protection provisions are subject to a public consultation process, where appropriate:

- One or more rounds of consultations are clearly incorporated in the planning process for legal and regulatory development, especially in the cases of complex or high impact proposals.
- Consultation processes are simplified only in cases where longer processes would be prejudicial to the interests of consumers.

49. During the development of new or amended rules, regulations, policies or guidelines, the regulator/supervisor organises a pre-consultation process to receive feedback from relevant interested or affected stakeholders from the industry and consumer sectors to receive input from relevant and affected stakeholders. For greater transparency, the regulator/supervisor could provide a feedback statement, when considered necessary:

- Targeted consultations are carried out through mechanisms such as informal discussions or presentations to formal consultative bodies.

50. Where appropriate, regulators/supervisors undertake a regulatory impact assessment to consult on the main impacts and outcomes of the proposal on financial services providers, authorised agents, not-for-profit sector organisations, and consumer and investor organisations.

51. Public consultation of policies and regulations include publication of:

- consultation papers explaining reasons for changing or issuing new regulations;
- the text of the proposed policy, law, regulation or guideline; and
- a clear description of the consultation process (e.g. timeframe, transparency rules, and consultation channels).

52. Following the completion of a public consultation, the regulator or supervisor publishes responses to public comments (e.g. in the form of a feedback report) which details the main differences between the consultation document and the final proposals.

Consultation channels

53. Regular meetings with representatives from consumers associations can provide a mechanism to enhance liaison and dialogue. Such meetings allow consumer associations to share information on consumer protection issues or trends, to present analyses on consumer protection needs or research, for example from undertaking mystery shopping exercises and to make proposals to modify or implement legislative and regulatory measures.

54. Regulators and supervisors develop multiple channels for direct engagement with the general public, for example, through the organisation of conferences or roundtables, or through the participation in social or mass media channels. Other forms of engagement can include:

- Information on a website or portal to facilitate exchanges of questions and answers between consumers and regulators/supervisors.
- Documents are published on the websites of regulators/supervisors allowing submission of written comments by stakeholders and the general public.
- Regulators/supervisors issue media releases to inform stakeholders about proposed measures or measures being implemented.

Inter-institutional coordination arrangements to identify and address cross-sectoral financial consumer protection.

55. A multi-sectoral council of agencies with responsibilities for financial consumer protection is set up as a high-level formal forum that meets regularly to identify sectoral developments and emerging consumer risks, to discuss reforms, and facilitate cooperation and coordination, ensuring consistency of actions of the agencies involved as to minimise overlaps and gaps in regulation and supervision of all financial services providers and their authorised agents operating across different sectors in the market. The council can include financial sectors' regulators, supervisors and consumer protection agencies and all other relevant bodies with responsibility for financial consumer protection.

Innovative/emerging

56. An advisory panel for financial services brings together professional experts and consumer representatives, as a way to present non-binding opinions, to provide advice on policy implementation and to discuss trends and actions that may have impact on financial consumers, as a mechanism to provide input to financial regulators.

57. Consultative committees may also be set up by a government ministry or parliament to provide feedback on proposals, to revise or issue regulations or legislations dealing with financial sector issues.

58. Stakeholder roundtables are effective in promoting cross-sectoral financial consumer protection policy coordination.

Principle 2: Role of Oversight Bodies

Underlying Assumptions

Mandate

59. Legislation expressly and clearly gives oversight bodies the mandate to protect consumers, powers to oversee market conduct activities, including powers to issue and enforce decisions or rules by administrative means, to take corrective action where necessary.

60. Regulators and supervisors embody a proactive culture towards consumer protection by analysing thoroughly what is driving harmful market conduct and designing approaches or interventions that will prevent future harm.

Resources

61. Oversight bodies have adequate resources, financial and non-financial, to undertake their activities, effectively and efficiently.

Independence

62. Oversight bodies are operationally independent in the discharge of their mission.

Accountability

63. Oversight bodies uphold high levels of transparency to ensure accountability.

Enforcement powers

64. The governance structure of oversight bodies is clearly defined.

65. Oversight bodies have sufficient powers to inspect regulated financial services providers and authorised agents and detect current or potential financial consumer protection issues.

66. Oversight bodies have at their disposal a range of tools including, surveillance, inspection, and complaint handling and investigation powers, to obtain information from financial services providers, authorised agents and individuals.

67. Oversight bodies have at their disposal a range of effective measures (including sanctions) for non-compliance by financial services providers, authorised agents and individuals.

68. Oversight bodies and their staff have the necessary legal protection against lawsuits for actions taken in good faith while discharging their duties, provided that they have not acted illegally.

69. There are appropriate processes for financial services providers, authorised agents and individuals to appeal against enforcement decisions, including judicial review.

Professional standards

70. Oversight bodies and their staff abide by high professional standards.

Key Themes

2.1 Oversight Body Function and Responsibility

There should be oversight bodies (dedicated or not) explicitly responsible for financial consumer protection, with the necessary authority to fulfil their mandates. They require clear and objectively defined responsibilities and appropriate governance; operational independence; accountability for their activities; adequate powers; resources and capabilities.

Effective Approaches

Common

Mandate

71. Oversight bodies have a mandate for maintaining financial consumer protection, particularly with regard to unfair financial trade practices by financial services providers.

Resources

72. Oversight bodies have sufficient resources to accomplish their mandate. Funding of oversight bodies can be derived predominately from a levy on regulated entities or can be partly or fully state funded.

73. To ensure independence, oversight bodies have control of their own budget, which is not a part of the State budget.

Independence

74. To ensure independence, senior management of oversight bodies are appointed following procedures which guarantee their independent appointment and the precise conditions of the end of their term or their removal. The nomination process takes into account the independence and skills of the individuals, their relevant experience, knowledge and qualifications. The law/regulation can include minimum requirements regarding the necessary experiences, knowledge and qualifications required by senior management.

75. Senior management of oversight bodies (e.g. Chief Executive, Senior Management team, Board Members) are appointed/nominated by State institutions (e.g. the Head of State, Parliament, or Supreme Court).

76. Heads of oversight bodies are appointed for fixed terms that can vary from between three to seven years (in the latter case this can be non-renewable).

Accountability

77. Oversight bodies uphold high levels of transparency to ensure accountability to institutional authorities (the Executive and Legislative) and also to the general public.

78. Oversight bodies can be required by law to report to the Executive and Legislative and the general public through the publication of annual reports or half-yearly reports. These reports illustrate

how delegated duties of oversight bodies have been fulfilled and how delegated powers have been exercised.

79. Oversight bodies publish data on inspections, sanctions against non-compliance and complaints handling and issuing new regulations.

80. Oversight bodies are invited to hearings at the Legislature and/or other governmental bodies, whenever it is deemed necessary.

81. Oversight bodies' use of funds is subject to review and audit, both internally and externally.

82. Internal audits of oversight bodies are conducted by an independent department.

83. External audits are conducted by the reputable entities with experience of undertaking similar public sector audits.

84. Oversight bodies' audited financial statements are presented either to the legislature and/or to a governmental body and are made public.

85. Oversight bodies invest in and are responsible for their own training and development programmes to develop on a continuous basis the skills and capabilities of their staff, which involves formal training supplemented by on-the-job experience.

Cross-Border activity

86. Oversight bodies pay special attention to issues arising from international transactions and cross-border sales and marketing.

Innovative/emerging

87. An independent, non-statutory, internal panel provides advice to the oversight body on the adequacy of its internal procedures and operational decisions and to ensure that its regulatory powers are exercised in a fair and consistent manner.

88. Independent annual audit reports are published on the activity of the oversight body.

2.2 Enforcement Framework⁸

Defined and transparent enforcement framework and clear and consistent regulatory processes.

Effective Approaches

Common

89. Oversight bodies have a legal mandate to inspect, detect and investigate market conduct so it is expected that they discharge their duties with high standards of technical competence in all activities they undertake. Oversight bodies fulfil their mandates as a means to uphold their credibility.

90. Legislation provides clear guidance on how to enforce regulatory/supervisory actions of national authorities and regulatory/supervisory requirements. Oversight bodies have appropriate mechanisms to check periodically that the enforcement framework pays due attention to the evolving nature, scale and complexity of risks which may be posed by financial services providers and

⁸ Enforcement is used broadly, ranging from 'supervision' to the enforcement of corrective action and sanctions.

authorised agents to consumers and of risks to which financial services providers and authorised agents may also be exposed to. All material changes to the enforcement framework are normally subject to prior public consultation.

91. The regulatory requirements and enforcement procedures are published. This includes information on the role of oversight bodies and how they perform their roles. Oversight bodies publish guidelines or recommendations on financial consumer protection matters following consultation with industry representatives, consumer organisations and other interested parties, where appropriate, in order to provide greater clarity on their expectations of the industry. This can cover matters such as conflicts of interest (including incentives), training, monitoring advisors, product governance and complaints handling.

92. Outcomes such as successful prosecutions, banning orders and civil court orders are publicised in media releases and published in enforcement reports and/or annual report.

93. To enhance regulatory effectiveness a risk-based approach is adopted, which uses the assessment of current and potential future risks to consumers to prioritise where the supervisory effort is directed. In assessing risks, the nature, scale and complexity of the business is taken into account.

Enforcement action

94. The realistic threat of enforcement action can be an important tool in deterring poor behaviour, misconduct and achieving compliance with consumer protection requirements. Therefore oversight bodies have the necessary powers to impose remedial measures, take corrective enforcement action and impose sanctions, where necessary.

95. Oversight bodies have the necessary powers to apply a range of actions or remedial measures which allows for early intervention when necessary.

96. Preventive and corrective measures are commensurate with the severity of the issues encountered and may include fines, remediation to consumers, routine off-site surveillance and on-site examinations, monitoring of complaints received from consumers, undertaking of thematic reviews and continuous dialogue with entities.

97. The oversight body requires financial services providers to develop a plan, proportionate to their sizes and business scales, to prevent or correct identified compliance related issues. These plans include agreed steps that should be taken to resolve any issues within an acceptable timeframe. The oversight body periodically follows up with the financial services providers to ensure that they have implemented the remedial measures. Financial services providers are expected to formally reply to each and every finding the oversight body notes.

98. Oversight bodies impose sanctions by way of fines and other penalties against financial services providers, authorised agents and individuals where the provisions of the legislation or regulation are breached. This includes failing to provide information to the oversight body in a timely fashion, withholding information from it, or providing information that is intended to mislead the oversight body. The sanctions are proportionate to the identified breach.

Implementation of the enforcement framework

99. Oversight bodies have powers to conduct regular on-site and off-site supervisory activities, as well as thematic or further investigation in case they suspect or note a breach in the law or

regulations. This activity is underpinned by formal powers to access to books, records and any information necessary to conduct the inspection, as well as to require regular and ad-hoc reporting. The powers to investigate extend to situations where the oversight body has reason to believe there has been a breach in regulations.

100. Oversight bodies supplement the formal methods (e.g. inspection, detection and investigation work) with more informal approaches such as continuous dialogue with key financial services providers, relationship management, and meetings with senior management.

101. Oversight bodies and/or ombudsman schemes have a range of actions available in order to apply appropriate and proportionate enforcement actions where problems are encountered. These include measures such as:

- Observation letter.
- Administrative fines.
- Appointing temporary managers.
- Restrictions on business activities or products.
- Suspension or revocation of a licence.
- Disqualification of individuals from certain activities or positions (withdrawal of a professional license, temporary or permanent ban from exercising a regulated profession).
- Referring suspected criminal cases for public prosecution.
- Remedies to consumers such as the organisation and working of an alternative dispute resolution mechanism.

102. Where corrective enforcement action has been taken or remedial measures, directions or sanctions have been imposed, the oversight body checks compliance by the financial services providers and assesses their effectiveness.

Innovative/emerging

103. Consumers, industry participants, financial services providers' employees and interest groups can report market misconduct to the oversight body through self-reporting, whistle blowing and via an on-line facility that is clearly differentiated from consumer complaints mechanisms.

104. The oversight body requires self-assessment evaluations by financial services providers on compliance with consumer protection requirements.

105. An external review of financial services providers' compliance measures, processes and procedures with consumer protection requirements is undertaken periodically. This can be useful, particularly where compliance issues have arisen.

106. Oversight bodies supplement annual public reports with more regular (e.g. quarterly), or ad-hoc, reporting on enforcement action taken.

107. Sanctions taken by oversight bodies against financial services providers, authorised agents and individuals are generally made publicly available, for a limited/appropriate period of time, when they are final and following careful consideration.

108. Oversight bodies require a financial services provider to assign a senior staff manager to act as a coordination chief. This structure enables the oversight body to convey quickly and more effectively financial consumer protection issues to the financial services provider; accelerates the enforcement of financial consumer protection and helps to build a consumer based approach within the financial services provider.

2.3 Professional Standards

Oversight bodies should observe high professional standards, including appropriate standards of confidentiality of consumer and proprietary information and the avoidance of conflicts of interest.

Effective Approaches

Common

109. The staff of oversight bodies are subject to strict confidentiality requirements. This duty of confidentiality applies to all information, be it oral, written, or stored using electronic media.

110. Oversight bodies' IT and security team, conduct the monitoring and auditing activities for all staff to ensure they comply with relevant policies and do not expose to breaches in confidentiality.

111. The oversight body has criteria in place to ensure the competence and experience of potential candidates who apply for a professional position.

112. High professional standards relating to confidentiality and the avoidance of conflicts of interest are determined by law and by oversight bodies' internal policies, namely through codes of conduct or ethics.

Enforcement of the professional standards

113. Enforcement of high professional standards is promoted through oversight bodies' internal compliance and risk management structures. Breach of codes of conduct can entail disciplinary actions.

114. The breach of legal obligations entails criminal and civil liabilities under the law and is decided upon by courts.

Measures to attract and retain qualified and experienced staff

115. Oversight bodies retain qualified and experienced staff through a combination of measures that include:

- Career development.
- Remuneration package.
- Training and development.
- Staff engagement.

- Staff recognition.

Innovative/emerging

116. Legal provisions and/or internal service charter (e.g. National Charter on Public Service Values or Code of Conduct) sets out what the public can expect when it deals with oversight bodies. For example, an oversight body commits, among other things, to:

- treating the public with respect and courtesy;
- providing the public with prompt, professional and quality service at all times;
- observing the highest professional and ethical standards, discharging its duties fairly, efficiently, impartially and courteously;
- disclosing and taking reasonable steps to avoid or manage any conflict of interest (real or apparent);
- making consistent decisions and informing affected individuals in a timely manner;
- monitoring and improving its performance in the services it provides;
- not making improper use of internal information or the employee's duties, status, power or authority in order to gain a benefit or advantage for the employee or for any other person;
- at all times behaving in a way that upholds the values and the integrity and good reputation of the oversight body; and
- being openly accountable for its actions.

117. A specific professional standards unit, established within an oversight body, reviews complaints made about staff conduct in connection with regulatory and supervisory activities.

2.4 Cooperation

Co-operation with other financial services oversight authorities and between authorities or departments in charge of sectoral issues should be promoted. A level playing field across financial services should be encouraged as appropriate. International co-operation between oversight bodies should also be encouraged, while specific attention should be considered for consumer protection issues arising from international transactions and cross-border marketing and sales.

Effective Approaches

Common

118. A joint unit established between domestic oversight bodies ensures cooperation and consistency of regulatory and supervisory actions. The purpose of a joint unit is to:

- identify regulatory and/or supervisory overlaps;
- provide a high-level forum for co-operation and collaboration between financial consumer protection agencies;

- provide a jointly operated service for answering queries from the general public and to monitor trends in unfair business practices (i.e. monitoring the recording of consumer complaints);
- undertake an analysis of the available information in a consolidated manner;
- co-ordinate and exchange information and co-ordinate the supervision and compliance of relevant recommendations;
- establish agreements (predominantly Memoranda of Understanding (MoUs), or covenants, or conjoint protocols) with a number of other domestic/foreign authorities which can be used to set out:
 - relevant areas of common interest;
 - ways of operation (liaising, enforcement, information exchange on cross-border and other issues, shared compliance, national educational campaigns); and
 - relevant referral procedures in relation to delegation of powers between various members.

119. Specialist forums can facilitate cooperation and coordination of the regulation and supervision of financial services providers.

120. Committee of experts which gathers different stakeholders (e.g. financial sector commission, co-ordination committee) can be established.

121. Statutory laws enable oversight bodies to render assistance to foreign regulators/supervisors in their administration or enforcement of foreign business laws by obtaining relevant information, documents and evidence from persons and transmitting this information, evidence and documents to foreign regulators/supervisors.

122. Oversight bodies participate in an inter-institutional stability council that monitors the functioning of the financial system and formulates and coordinates responses to developments threatening financial stability.

123. Oversight bodies engage and coordinate with regional and global standard setting bodies to increase their awareness and knowledge of cross-sectoral financial consumer protection issues, and improve enforcement of rules at the national level.

124. Taskforces can be created to make recommendations on specific cross-sectoral issues of concern in financial consumer protection. Taskforces may include participation of multiple authorities, including governmental bodies, key stakeholders, such as consumer organisations, industry associations and trade bodies, research/academic institutions, professionals or experts.

125. The competing objectives/mandates between different governmental entities are managed by:

- Agreements and/or clear legal distinctions regarding the competences, functions and responsibilities of each regulatory/supervisory body.
- Establishing appropriate legal requirements for agencies to co-operate (division of responsibilities, arrangements related to the exchange of information ensuring there are no gaps in coverage and

that authorities are required to cooperate with one another), and/or through formal mechanisms of consultation.

Level playing field

126. An integrated approach to financial consumer protection regulation/supervision ensures all financial services sectors are regulated and/or supervised in a consistent way.

127. Oversight bodies consult with other relevant authorities before issuing consumer protection guidelines, or regulations, so as to ensure consistent market conduct rules and approaches across authorities.

128. Oversight bodies participate in:

- Global and/or regional standard-setting bodies for prudential regulation and/or conduct supervision.
- Where appropriate with co-operation mechanisms at the level of the EU (for example, collaboration of the relevant authorities of the EU member states in particular in the application of EU Directives) and other relevant institutions.

129. At the European level, the European Supervisory Authorities (ESAs) play a central role for contributing to the development of common regulatory and supervisory standards and in ensuring the consistent application of the EU legal framework. Examples include:

- ensuring strengthened supervisory cooperation among competent authorities (e.g. the ESAs participate in joint supervisory colleges, mediation powers of the ESAs);
- developing draft regulatory and implementing standards as well as guidelines (e.g. guidelines on Complaints Handling by Insurance Undertakings and by Insurance Intermediaries, financial dispute resolution network (FIN-NET); draft guidelines of the Joint Committee on complaints handling in the banking and securities sector); and
- the Joint Committee that plays an important role in ensuring cross-sectoral cooperation and consistency (e.g. the high-level, cross-sectoral principles of the Joint Committee on financial institutions' internal product approval process aimed at providing consistency between each of the ESA sectors).

Innovative/emerging

130. To enhance access to consumer information, a common entry point is established which serves as a public service platform that guides consumers on their rights and can answer questions from consumers on products and/or their distribution across financial sectors (e.g. banking and credit, insurance, securities, and pensions).

International cooperation between oversight bodies

131. In specific cases there is a requirement for improved international cooperation between oversight bodies. For instance in the case of Dynamic Currency Conversion (DCC), oversight bodies require DCC service providers, and credit card scheme operators if applicable in their own jurisdictions, enhance the transparency of the DCC service by disclosing the cost of the service (including the exchange rate and percentage of fee charged) to consumers at the point of sale before

the transaction is executed to enable the consumers to make an informed decision on whether they would use the DCC service. DCC is a service offered to a credit card holder by an overseas merchant to settle an overseas credit card transaction at the point of sale in the domestic currency of the cardholder. The merchant generally charges a high conversion fee for the service in the form of a mark-up on the foreign currency exchange rate, and the fee will be shared between the merchant, the merchant acquiring bank and the foreign exchange company.

Principle 3: Equitable and Fair Treatment of Consumers

Underlying assumptions

132. Financial services providers and authorised agents are expected to adopt equitable and fair treatment of consumers as an integral part of their business culture.

133. The regulatory/supervisory framework for the delivery of equitable and fair treatment of consumers varies depending on the legal framework of individual jurisdictions.

134. Regulators/supervisors can set principle-based requirements for treating consumers equitably and fairly. Advantages of principles-based standards are that they can be more flexible, technology-neutral and time-proof than rules-based standards. Principles can be complemented with more detailed rules that are subject to periodic review to reflect the dynamic nature of financial markets.

135. Principles, requirements and standards related to “treating consumers equitably, honestly and fairly” can be set out clearly in the laws, codes and guidelines. This encompasses the obligation for parties to deal in good faith with each other under contract law. Regulators/supervisors seek to impose appropriate and consistent principles, requirements and standards to the financial services providers and authorised agents they oversee but in certain instances they can develop a sectoral regulation model imposing tailored requirements in specific fields.

136. A number of stakeholders, including consumer organisations, industry associations/trade bodies, regulators/supervisors, policymakers, complaints handling schemes and the courts can have a role to play in ensuring there is a clear and shared understanding of how consumers are treated equitably and fairly.

137. Treating consumers equitably and fairly can be embedded in provisions relating to all aspects of the relationship between financial services providers and consumers, including, transparency, advertising, advice, remuneration, conflict of interest and corporate governance. These provisions can promote responsible business conduct and prohibit bad practice such as misleading or aggressive commercial practice or exploitation of consumer vulnerabilities and unfair contractual terms.

138. A common understanding as to what is meant by “equitable and fair treatment” can be arrived at through various channels including: legislation, guidelines and recommendations issued by authorities; decisions by courts and alternative dispute resolution systems, which can be complemented by judicial interpretation, industry practices and consumer organisations’ recommendations.

139. Breaching the duty to treat consumers equitably and fairly can result in enforcement action (including but not limited to fines) on financial services providers and their authorised agents, either by financial authorities (in the case of financial sectoral or general legislation) or by judicial courts (in the case of contract law). Action may result from the breach of either a general principle and/or a specific rule.

140. Besides enforcement actions, alternative measures can positively influence financial services providers to treat their consumers equitably and fairly. These include codes of conduct, commitments, and ongoing dialogue between regulators/supervisors and financial services providers.

141. Financial services providers consistently apply the principles of equitable and fair treatment of consumers as a way to improve their corporate governance. This can enable firms to build strong brand recognition and thereby help retain consumers in the marketplace.

142. The vulnerability of a given consumer (or group of consumers) can be a dynamic phenomenon that is dependent on a combination of his/her personal characteristics (e.g. disability or lack of capacity) and market conditions (e.g. unemployment). It can also be a broad term relating to a particular susceptibility of consumers to detriment based on their personal characteristics (including but not limited to disadvantage – e.g. low education or poor language proficiency). There is no uniform definition of consumer vulnerability across, or even within, jurisdictions.

Key Themes

3.1 Fairness

All financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers.

Effective Approaches

Common

143. Fairness for consumers of financial services and products can be achieved through a range of protection measures such as fair and clear advertising, improved transparency (before, during and after the point of sale), accountability, provision of standardised (or personalised) information. Other measures might include, prohibiting unfair terms and practices, regulating contracts, assessments of creditworthiness/suitability, sound and clear advice, fair execution, implementation of guarantees and the ability for consumers to exit a contract.

144. General principles of good faith can apply to all financial contracts and obligations.

145. By law, financial services providers can be subject to consumer protection obligations which set specific standards on the treatment of consumers.

146. Treating consumers fairly can be enhanced through financial services providers' compliance with recommended practices within a Code of Practice which may be issued by the relevant regulator/supervisor or issued by the industry associations and which may be statutory or endorsed by the relevant regulator/supervisor.

147. Product approval, advice and operational and consumer-facing processes can be reviewed and assessed for fairness.

148. Financial services providers can be made subject to a suitability obligation to ensure the product is “not unsuitable for the consumer” before making a sale.

149. Where consumers refuse to provide relevant information sought by a financial services provider, to assess whether a product or service is suitable for the consumers, the financial services provider can inform consumers that, in the absence of relevant information necessary to assess suitability, it cannot recommend whether the product or service is suitable for the consumer.

150. All stakeholders have a role to play in terms of promoting the equitable and fair treatment of consumers:

- Industry associations and/or trade bodies may set standards that go beyond legal provisions by setting self-regulatory codes of conduct. To be effective, the industry code usually has mechanisms for monitoring and enforcing breaches of the code.

- Policymakers, regulators and supervisors provide guidance as to what is meant by “equitable and fair treatment”, liaise with external stakeholders and enforce the law/regulatory codes in case of a breach.
- Governments can serve an important role in developing and passing relevant legislation.
- Courts can set standards on how consumers should be treated.
- Academic research can promote discussion and insight into the concepts of treating consumers equitably and fairly.
- Consumer groups may contribute expertise on consumer vulnerability and provide examples of what treating consumers equitably and fairly means, provide evidence of failure to treat consumers equitably and fairly by financial services providers and failures by regulators/supervisors to enforce standards, rules and/or codes on equitable and fair treatment.

Innovative/emerging

151. Financial services providers may have the legal obligation to implement adequate product approval processes to provide products that are appropriate for and meet the needs of consumers. In the case that a product harms the consumers’ best interest, the financial services providers and their authorised agents can take corrective measures to withdraw/suspend the sale of the product. If this does not happen, the regulator/supervisor may have the power to intervene.

152. Regulators/supervisors can conduct on-site visits/inspections, examine consumer complaints and/or undertake mystery shopping exercises. These activities focus on regulatory compliance, internal controls and management supervision. This can also include an assessment of whether a financial services provider treats consumers fairly, in accordance with relevant requirements and standards. This can help regulators/supervisors to identify examples of industry good and poor practice.

153. Several tools⁹ exist to communicate how regulators/supervisors view treating consumers equitably and fairly, which may include some of the following:

- ongoing dialogue with market regulated entities (financial services providers and authorised agents);
- joint work with market stakeholders, including industry associations, in order to promote a clear and common understanding. This can include instruments like public consultations, the establishment of working groups, conferences or interpretation guidelines;
- letters to market participants to ensure a correct understanding and a uniform application of laws and regulations and to achieve a level of harmonisation in the behaviour of financial services providers and authorised agents, at all stages of the relationship with the consumers;
- thematic work by regulators/supervisors to analyse whether particular conduct or practices by financial services providers pose significant risks in terms of consumer protection, which may

⁹ Some of the tools identified have been in use for a considerable time and are considered as being innovative practices rather than emerging.

entail a request for financial services providers to take corrective actions, and an assessment as to whether financial services providers are taking appropriate actions to comply with the principle of equitable and fair treatment of consumers;

- requirements for financial services providers and their authorised agents to take into due consideration decisions of complaints handling schemes, e.g. alternative dispute resolution systems, including on how the principle of fair treatment/behaviour has to be applied;
- regulatory/supervisory representatives attending conferences, gatherings and meetings to discuss equitable and fair treatment of consumers;
- messages through mass media (such as through radio and TV talk shows) help raise awareness about treating consumers equitably and fairly;
- raising consumer awareness through education programmes and increasing public awareness on what is meant by ‘treating consumers fairly’ to provide demand-side pressure on financial services providers;
- multi-stakeholder consultation forums made up of industry and professional bodies and consumer organisations;
- piloting and publication of a treating consumers fairly self-assessment tools for industry’s use and undertaking of a treating consumers fairly baseline study to test industry’s readiness and providing guidance in relation to areas of emerging consumer risk; and
- hosting roundtables with industry’s senior management to discuss topics including equitable and fair treatment of consumers.

154. Regulators and supervisors can use insights gained through behavioural economics research to inform their approach to potential remedies to help consumers.

155. Feedback on consumer decision making gained through communication tools and by applying behavioural economics can be the basis for regulators/supervisors to investigate and potentially restrict the use of certain products by certain consumer segments.

156. As appropriate, regulators/supervisors can publish the aggregated results or recommendations given to financial services providers to make improvements on issues identified through, for example, mystery shopping exercises and to encourage them to adopt good practices.

3.2 Governance and Culture

Treating consumers fairly should be an integral part of the good governance and corporate culture of all financial services providers and authorised agents

Selected Effective Approaches

Common

157. Regulators/supervisors can examine the management information on relevant treating consumers equitably and fairly which is adopted by financial services providers, to establish whether it is fit for the purpose of measuring the delivery of the objective of treating consumers fairly and equitably.

158. Financial services providers can demonstrate the embedding of the objective of treating consumers fairly in the firm's corporate culture, governance, general commercial policy, staff training and control functions, including the financial services providers' risk management functions and performance management, incentive and remuneration practices.

159. Financial services providers' and authorised agents' decision making can take into account the objectives of equitable and fair treatment of consumers.

160. Conduct values, including the obligation to treat consumers fairly and equitably, could be demonstrated and embedded throughout the financial services providers' and authorised agents' business model.

161. Financial services providers can conduct consumer satisfaction surveys in order to provide feedback as to whether their staff are implementing the rules of good corporate culture as regards to fair and equitable treatment of consumers.

162. Financial services providers can have an internal code of conduct that sets the promotion of equitable and fair treatment of consumers at the heart of its organisation ethos and practices.

163. As part of the authorisation procedure, regulators/supervisors responsible for authorisation can check whether the applicants (an entity and/or an individual) comply with certain standards regarding treating consumers fairly in terms of skills, expertise, integrity, accountability and business model.

164. The same standards related to the obligation to act diligently, fairly and transparently in the interests of consumers and the integrity of the market can apply to all types of financial services providers, irrespective of size or legal nature. The principle of proportionality could ensure appropriate systems and procedure requirements are in place to guarantee these standards are suitable for all financial services providers and authorised agents. In particular, such requirements should be proportional to the nature, scale and complexity of the business performed and the type and range of services and activities provided. For example, in the case of microcredit, whereby creditors work closely with non-profit organisations, allows for the introduction of lighter rules.

165. Financial services providers sign up to a charter which aims to foster a stronger culture of treating consumers equitably and fairly at all levels within the organisation and at all stages of their relationship with the consumer.

Innovative/emerging

166. Regulators/supervisors can publish examples of good and poor practices in terms of treating consumers equitably and fairly.

167. Regulators/supervisors can periodically publish dashboards that measure the extent to which financial services providers are prioritising their consumer's interests. These measurements could be translated into a score card, which can offer an incentive for financial services providers to compete on quality of service in the pursuit to be labelled as "best of the class".

168. Regulators/supervisors can conduct surveys about the extent to which management leads by example in terms of equitable and fair treatment, including by making sure their staff know what is meant by the principle 'Treating Customers Fairly' and by fostering a culture of fairness within their organisation. Specifically, it could be advisable to gauge whether a learning culture exists within financial services providers, with the most relevant factors being consumer involvement through

awareness and feedback collection, the conduciveness of financial services providers' staff to change, attitude to feedback and the respective roles of the board of directors (including the non-executive directors) and the management team.

169. Regulators and/or supervisors can conduct cross-sectoral appropriateness tests for employees of financial services providers. In doing so, they can check whether staff of regulated entities demonstrate appropriate expertise. Expertise encompasses knowledge, skills and professional conduct which includes treating consumers equitably, honestly and fairly and can be evidenced from the education, work experience and competencies of the policymakers of the financial services providers and their authorised agents, and their continuous application.

3.3 Vulnerable Groups/ Access

Special attention should be dedicated to the needs of vulnerable groups.

Effective Approaches

Common

170. Actions can be taken to facilitate financial inclusion, including a guarantee of, or a commitment to providing, access to a basic bank account and the basic banking services associated with it (withdrawals, payment transactions, use of a payment card and access to online facilities), free of charge or at a reasonable fee.

171. A difference can be drawn between “social policy”, which can entail financial services providers offering particular basic financial products and services at a low cost for consumers; and the ease with which consumers can access and use financial products and services.

172. Regulators/supervisors introduce additional protection measures for less experienced or less knowledgeable consumers and for consumers who are over indebted.

173. Regulators/supervisors take the vulnerability of the consumer base into account when applying a risk-based supervision model.

174. Specific measures can be applied to protect minors or adults under the care of a guardian, refugees, foreign workers and new immigrants.

175. Financial services providers may ensure that vulnerable consumers are provided with reasonable arrangements and/or assistance that may be necessary to facilitate them in their dealings with the financial services providers.

176. Financial services providers can take into consideration the capabilities and vulnerabilities of their consumers when designing, marketing and distributing financial products and services and when providing advice. Potential vulnerabilities can be identified, for instance, consumers might be capable of making decisions but could require reasonable accommodation in doing so (hearing-impaired, vision-impaired, official language not first language, poor literacy, etc) or their particular life stage or circumstances can be taken into account when assessing suitability (age, poor credit history, low income, serious illness, bereaved, etc). Additionally, consumers might temporarily or permanently have limited capacity to make decisions because of mental illness or intellectual disability.

177. Special measures could be introduced to ensure protection of consumer groups or communities with particular cultural or linguistic needs.

Innovative/emerging

178. Special attention can be paid to biases that have the most harmful effect on the decisions that consumers make and to identifying the measures that can be taken to mitigate these effects. Findings may be applied to the supervisory strategy or to the design and implementation of specific policy responses.

179. In order to map vulnerable groups among consumers, regulators, supervisors and policymakers can develop proactive outreach programmes with consumer organisations, industry associations and trade bodies, complaint handling mechanisms (ombudsman services/alternative dispute resolution schemes). Additionally, they can gather information on the characteristics and needs of vulnerable groups through complaints' data, courts' rulings, and findings from off-site and on-site supervisory inspections, statistical surveys, panels with experts or quantitative and qualitative consumer research.

Principle 7: Protection of Consumer Assets against Fraud and Misuse

Underlying Assumptions

180. Frauds in the financial domain need to be prevented and promptly detected and addressed in order to protect consumers and ensure public trust in financial services markets. This applies both to frauds from entities different from financial services providers (external frauds) and frauds from within the financial services providers (internal frauds).

181. The first line of defence to protect consumers' assets and claims must be the sound and prudent oversight and management on the part of financial services providers themselves. Prudential regulation and supervision is a further key safeguard that can prevent frauds as well as the financial distress of financial services providers.

182. Mechanisms are in place to inform consumers about their personal assets or claims of which they might be otherwise unaware of.

183. Resolution of distressed financial services providers requires special arrangements in order to take into account all the interests at stake, including those of consumers.

184. Consumer protection and the need to keep consumers' trust in the financial system require that special arrangements are in place so that consumers bear limited losses when a financial services provider is wound up.

Key Themes

4.1 External Frauds

Relevant information, control and protection mechanisms should appropriately and with a high degree of certainty protect consumers' deposits, savings, and other similar financial assets, against frauds from entities different from financial services providers (external frauds)

Effective Approaches

Common

185. External frauds (an illustrative list of possible external frauds is contained in the annex) are monitored by regulators/supervisors and/or relevant agencies or other authorities, industry associations and financial services providers.

186. Licensing and/or registration of relevant financial services providers and the supervision thereof help to mitigate the risks of fraud by non-regulated/non-registered or non-supervised entities.

187. Regulators/supervisors have power to investigate unfair trade practices, to publish warnings about illicit offerings of financial services and to inform consumers directly and through partner organisations on the procedures to access information on the regularity of a proposed transaction.

188. Payments instruments embed safety mechanisms such as a trustworthy ID verification mechanism compatible with risk levels of internet and mobile banking services. Payment cards and terminals (such as ATMs) should be progressively upgraded with the latest technology.

189. In terms of the securities market, financial services providers perform due diligence in choosing any third party where the consumers and/or client's assets are deposited.

190. There are specific provisions to detect and to sanction insider trading, market manipulation and fraudulent misrepresentation.

191. The regulator/supervisor can fine authorised agents for non-remittance of premiums to insurance undertakings or of any sum which the insurance undertaking pays to the consumers.

Innovative/emerging

192. External frauds are monitored by regulators/supervisors and/or other relevant agencies in close co-operation with police and judicial authorities.

193. Regulators/supervisors require standardised reporting by financial services providers on consumer complaints arising from external frauds.

194. Financial education initiatives and campaigns provide effective and timely warnings to consumers of the most widespread external frauds and what steps consumers can take to prevent them.

195. There are one or more central databases which financial services providers may consult in which frauds, suspicious or at risk transactions, identity thefts (e.g. in loans, debit and credit cards, insurance) are reported.

196. Unauthorised payments (made with payment cards, direct debits, or cheques) are reimbursed by the financial services providers quickly unless it is shown they are due to the consumers' gross negligence.

197. Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and his/her payment service provider. The liability for the consumer may be lowered, taking into account the nature of the personalised security features of the payment instrument and the circumstances under which it was lost, stolen or misappropriated {e.g. secure payment instruments/payment methods may be promoted by introducing a liability regime for the service provider, which reduces the payer's liability (except where the payer has acted fraudulently) if no strong customer and payment authentication can be guaranteed.

198. Payment service providers report annually to the regulators or supervisors regulators the measures against fraud they have put in place.

199. Authorised insurance agents: i) are not entitled to receive cash payments or cheques or ii) are obliged to hold security in form of a guarantee (e.g. a guarantee policy) under which policy benefits are to be provided if they go bankrupt.

200. Premiums paid to the authorised agent in the insurance sector and the amounts to be used for the payment of claims or owed by undertakings and managed through the authorised agents represent segregate and independent assets from those of the authorised agent itself. The premiums paid to authorised agents have to be deposited in a separate account in the name of the undertaking or of the intermediary itself in its capacity as such. The money shall be deposited immediately and in any event not later than a short period of time (e.g. ten days) after the date when the premiums are received.

201. The regulators/supervisors issue 'black lists' of counterfeiting or unauthorised insurance companies through press releases or profiles of financial services providers and their authorised agents which commit frauds.

4.2 Internal Frauds

Relevant information, control and protection mechanisms should appropriately and with a high degree of certainty protect consumers' deposits, savings, and other similar financial assets, against internal frauds.

Effective Approaches

Common

202. Financial services providers implement general policy, business operations procedures designed in such a manner to guard against fraud by staff, including fit and proper criteria for board, employees and agents, compliance with rules on conflicts of interest, separation of functions (i.e. the separation of trading, settlements and controls), and internal procedure to be notified on incidents in a timely manner.

203. Financial services providers ensure that internal control structures, procedures and controls are in place which include: segregation of duties and roles and responsibilities where such segregation is appropriate from an operational risk mitigation perspective; application of logical access security; access rights and data security on electronic data, where applicable; physical security of the providers assets and records, where applicable; documentation relating to business processes, policies and controls, and technical requirements.

204. Financial services providers implement risk based compliance and audit regime, to avoid internal fraud. This will include on-site inspection and off-site surveillance with an adequate audit trail.

205. Regulators and supervisors review reports prepared by internal and external auditors of financial services providers.

206. Financial services providers quickly refund/compensate consumers for financial loss unless it can be proved that the loss occurred was due to the negligence or fraudulent behaviour of the consumers.

Innovative/emerging

207. Financial services providers implement an equivalent level of control, coordination and monitoring in outsourced activities as for all in-house activities.

208. Policies and/or regulation/supervision can require a level of responsibility by the boards of financial services providers for having adequate internal measures to prevent fraud.

209. Regulatory/supervisory actions are prompt and any financial services provider's board members or employees that are guilty of fraudulent behaviour can receive a penalty or undergo disciplinary sanctions, and/or are banned from the industry for life or a defined period of time.

4.3 Misappropriation

*Relevant information, control and protection mechanisms should appropriately and with a high degree of certainty protect consumers' deposits, savings, and other similar financial assets **against misappropriation or misuses.***

Effective Approaches

Common

210. Legal and organisational arrangements are in place to segregate consumers' assets from the assets of the financial services providers and from the assets that the financial services providers hold on behalf of other consumers/clients.

211. Financial services providers have procedures in place that minimise the risk of use of one consumer's assets for another consumer's transaction: for example, financial services providers segregate investors' assets from their own assets and from the assets an institution holds on behalf of other clients. In some cases, a consumer's assets are held separately from other consumers' assets by use of individual segregated accounts. Alternatively, consumers' assets are held in omnibus accounts, a pool of consumers' assets in which the investor's right of ownership is replaced with a right of co-ownership in the community of property formed by the pool. Furthermore, each investment fund and each sub-fund constitutes an independent pool of assets, separated to all intents and purposes from the assets of the collective portfolio manager and from those of each unit-holder, as well as from any other assets managed by the same company.

212. Financial services providers' internal records are clear and readily available to make it possible to ascertain, at any time and without delay, and particularly in the event of the undertaking becoming insolvent, each consumer's position in terms of securities, cash and pending transactions.

213. Financial services providers keep trust property separate from assets belonging to that institution, and must clearly indicate in their books of account the trust property as being property belonging to a specified principal. Consumers' assets in the trust account of a financial services provider are separately managed and segregated from other accounts of the financial services provider (including the financial services provider's own account).

214. Payment and e-money institutions keep separately in their books the payment service users' funds, accepted for a payment transaction, from other funds accepted for activities other than payment services, or otherwise, the said funds are covered with an insurance policy

Innovative/emerging

215. Segregation of assets is verified by external auditors through their reports on client asset protection of investment firms and other entities which provide custody services, client asset administration services, or discretionary and individualised portfolio management services.

216. The money deposited in financial investment companies for securities trading is deposited separately.

217. When pension funds are managed by insurance undertakings, all assets and liabilities corresponding to pension funds are ring-fenced, managed and organised separately from the other activities of the insurance undertakings, without any possibility of transfer.

218. Insurance companies set aside special accounts for pension savings, retirement insurance and variable insurance. Thus insurance companies separate the assets in the special accounts from the rest of the assets of the companies for actuarial process.

219. Financial services providers holding consumer's assets are required to conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties with whom these assets are held.

4.4 Unclaimed Assets

*Arrangements in place in order to protect the owners or the beneficiaries of **unclaimed assets**:*

Effective Approaches

Common

220. Public bodies or professional associations provide assistance to consumers to search information on dormant deposits as well as unclaimed assets in Contracts for Insurance coverage of death. They make available to public search in a “Dormant Accounts Checking System” or “unclaimed assets in Contracts for Insurance coverage of death” Checking systems.

221. Eligible consumers can check dormant deposit and/or unclaimed assets in Contracts for Insurance coverage of death by visiting financial institutions via webpages or consulting other appropriate databases.

222. Every natural or legal person is entitled to ask financial services providers about an existing stipulation made in his/her favor in a life insurance policy contracted by a deceased person (including life insurance to cover debt of a deceased person). The financial services provider investigates and responds to the request within a reasonable time limit and does not charge any additional interest before terminating the investigation period.

Innovative/emerging

223. Subject to personal data protection laws, a public body or a professional association makes available to the general public a complete list of the dormant accounts (e.g. on a website). There is no charge for accessing the list. The public body or the professional association in charge of the database regularly undertakes public campaigns to raise awareness of the database and information on dormant assets is circulated and publicised nationwide.

224. The law and/or regulations can impose special obligations on financial services providers to seek contact with owners of dormant deposits in order to limit the risk of unclaimed deposits. Financial services providers are required to take reasonable steps to trace consumers and return unclaimed dormant deposits such as: to inform consumers’ accounts or products in a central database held by a national register (every account is registered in this database, facilitating searches for unclaimed assets); and/or to notify individuals of bank account balances periodically (e.g. every two, five and nine years) after the last transaction on an account, to the last addresses provided by the account holders, or as soon as the conditions pursuant to which an account is to be considered dormant are met; and/or to send a list of the accounts which have become dormant the preceding year, including the personal data of the beneficiaries, to a public body. In cases where there is no public or professional association to facilitate searches for unclaimed assets, financial services providers have procedure in place to support reunification of assets to their rightful owners.

225. A public body (such as the Office of Administrator General and Official Receiver) or professional association make available a public register of contracts, for insurance coverage of death, which purpose is to provide the necessary information to the interested parties (e.g. legal successors or beneficiaries), in order to let them know if a deceased person had contracted insurance in case of death, and enable the said interested parties to locate assets and claim the indemnity under the insurance contract.

226. Financial services providers holding unclaimed assets (securities and cash) are required to continue to segregate these assets and provide annual statements in relation to assets held.

227. The law and/or regulator/supervisor impose special obligations on financial services providers to improve the management of unclaimed assets. Financial services providers are required to take reasonable steps to trace consumers and return unclaimed assets by writing to the consumer at

the last known address to notify him/her how to recover the unclaimed asset and/or to obtain information about the possible death of the owner of the unclaimed assets and requirements to consult at least once a year the public register of deceased persons; and/or to hold asset remained unclaimed for a specified length period, before transferring to the State, a public body, a national bank, or a charity.

228. The law protects consumer's right for a reasonable time to reclaim funds from financial services providers. Where unclaimed assets have been transferred to a public body, a national bank or a charity, the consumer is paid by the financial services provider and the financial services provider then reclaims the funds from the relevant body.

4.5 Winding up procedures

Relevant information, control and protection mechanisms should appropriately and with a high degree of certainty protect consumers' deposits, savings, and other similar financial assets against FSP winding up procedure

Effective Approaches Common

Consumers' assets and [supervised] financial services providers winding up procedure

229. The law provides regulators/supervisors with the task to intervene even before a financial service provider fails and – when in the public interest – to take appropriate steps in order to resolve a failure when it occurs (including bridge institutions, bail-in, intervention of a Resolution Fund, etc.). Financial services providers are asked to prepare plans to cover times of distress. Regulators/supervisors ensure that all preventative steps are taken to deal with a financial services provider's failure.

230. In the event that preventive measures fail, the financial situation of a financial services provider deteriorates beyond a position where failure is certain, the following actions can be taken:

- The law protects clients' ownership rights to property on their assets which is commonly the case in securities sector (equities and fixed income).
- Consumers' assets are regarded as trust property. In these cases, in the event of the financial services provider winding-up, clients' property is recognised as separate from the financial services provider's general assets.

231. In case of financial services provider's failure, and in the event that the consumers' assets are not separated from the financial services provider's general assets, the way of protecting consumers' assets is either to give to consumers a preferred claim in the winding up procedure (as is commonly the case in the insurance sector), and/or to organise an efficient guarantee scheme which may be the case totally or partly in the different sectors, i.e. banking, insurance and securities.

232. An efficient guarantee scheme is all the more important should the jurisdiction preserve in the financial services provider's resolution procedure the usual hierarchy of claims, with losses allocated to shareholders first and residual costs allocated to subordinated debt-holders and unsecured and uninsured creditors as it is commonly the case for deposit claims in banking sector.

Arrangements/mechanisms in place (such as a guarantee schemes or compensation funds) to protect consumer's assets in case a supervised financial services provider becomes insolvent

233. In certain circumstances the law requires supervised financial services providers (e.g., bank or other deposit taking institutions, life insurance companies, non-life insurance companies, investment traders and brokers, merchant banks and mutual savings banks and mutual companies) to subscribe to a compulsory guarantee scheme or a deposit insurance policy, in order to protect consumers', depositors', policyholders' or investors' assets, and to maintain the stability of the financial system. If an insured financial services provider becomes unable to pay the deposits or insurance upon demand of the consumers due to suspension of business or bankruptcy, the insurance organisations covering the financial services pay the deposits or insurance to the consumers on behalf of the financial services provider concerned.

234. Guarantee schemes are either public/national bodies or private professional bodies. The guarantee scheme is generally funded by financial services providers ex ante (e.g. through annual contributions which flow into a special fund from which compensation scheme pays out compensation to eligible aggrieved customers) or ex post (i.e. when it is necessary to pay an indemnity to consumers). They may be privately managed even though they may have a close communication with supervisors.

235. Guarantee schemes are subrogated to the rights and remedies of the consumer against the failed financial services provider.

236. Guarantee schemes protect assets belonging to individual depositors.

237. The most common guarantee schemes are deposit guarantee schemes that ensure a safety net for account or deposit holders. Financial services providers are usually required, in order to be registered and/or licensed, to participate in the said deposit guarantee fund.

238. Investor guarantee schemes aim to provide adequate funds out of which eligible investors of failed authorised investment firms are compensated. Financial services providers are usually required to participate in them in order to be registered and/or licensed. The scheme pays compensation of a capped amount where an authorised firm is unable, due to its financial circumstances, to return money or investment instruments owed to an eligible investor.

239. Financial services providers are required, in case of compulsory guarantee scheme (usually deposit guarantee scheme and investor guarantee scheme), to provide consumers with information about the existence, the design, including the scope and the limit of the guarantee, in an easily comprehensible language. Information is provided before or at the point of sale, in writing or other appropriate means. Financial services providers may be obliged, upon request, to make information available about the applicable guarantee scheme.

240. Regulators/supervisors convey information on which financial service providers offer guarantee schemes, how they can be identified, the extent of the guarantee and the procedure for reimbursement.

241. In case resolution authorities opt for an orderly resolution scenario which ensures continuity of deposits, the scheme does not pay insurance to the depositors but may consider contributing to resolution costs. This solution is in general less expensive for the deposit insurers and advantageous for the depositors who keep access to their funds.

Innovative/emerging

Consumer's assets and financial services providers winding up procedure

242. Consumers' claims may take precedence over any other claim on the financial services provider's undertaking with the exception of other preferred claims such as claims by employees arising from employment contracts and employment relationships, claims by public bodies on taxes, claims by social security systems or claims on assets subject to rights in rem, as it is commonly the case in insurance sector for policyholders and beneficiaries.

Arrangements/mechanisms in place (such as deposit guarantee schemes or compensation funds) to protect consumer's assets in case a financial services provider becomes insolvent

243. For the insurance sector, financial services providers may be required, for purpose of authorisation (license/registration), to participate in an Insurance Guarantee Schemes (IGS). The IGS covers, in case of insurance undertaking, and under conditions and amount, respectively life and non-life insurance activities or both of them or part of them.

Annex: External Fraud

The law, regulations and/or the supervisor deal with the following external frauds, where appropriate:

In general

- Fraudulent financial services businesses using a combination of cold-calling and website to convince consumers they are legitimate entities
- Misuse of private information
- Misappropriation of clients' funds or premiums by authorised agents
- Misuse of personal information
- Marketing of illegal financial products
- Misappropriation by authorised agents and/or false authorised agents
- Transfer of money to fraudulent entities

Banking and payments

- Stolen/misused payment cards
- Stolen credentials, including:
 - Identity theft
 - Production of counterfeit ATM cards by capturing data from the magnetic stripes using reading devices to ATMs and obtaining customers' ATM PIN using instruments such as hidden cameras
 - Cloning/counterfeiting payment instruments
 - Electronic communication-based frauds such as:
 - Memory hacking
 - Trojan banking, i.e. using a computer malware to steal banking information by man-in-the-browser keystroke logging and form grabbing
 - Phishing, voice phishing, smishing, i.e. trying to acquire banking information by masquerading as a trustworthy entity in an electronic communication such as emails, phone calls, and SMS, respectively
 - Pharming, i.e. redirecting a website's traffic to another, fake site
- Unauthorised/unrecognised debits or transfers in checking/savings accounts
- Lost or stolen cheques used fraudulently
- Fraudulent orders placed through fax or e-banking interfaces, using a combination of social-engineering and technical attacks against banks and their personnel
- Fraudulent credit providers, i.e. entities not transferring credit amounts after an insurance fee has been paid by the prospective borrower
- Mortgage fraud, i.e. using false documents in order to get a mortgage

Securities

- investment services offered by unauthorised financial services providers
- Insider trading
- Market manipulation
- Breach of segregation rules
- Ponzi scheme

- Upfront payment/foreign money transfer scams, share fraud, boiler rooms, get-rich quick schemes, investment in unregulated high risk products such as carbon credits and rare earth metals, land banking schemes and overseas property investments

Insurance and pension funds

- Tombstoning, i.e. insurance brokers submitting insurance applications in the names of persons that do not exist
- Counterfeiting of insurance documents
- Claims of accidents that never happened
- Fake insurance and warranty schemes (premiums are taken from consumers but no insurance is arranged)
- Early pension releases before an established age (i.e. pension liberation or pension loan), where pension funds are transferred from legitimate pension schemes into ones usually set up abroad and the funds are either stolen or invested into high risk products

Principle 8: Protection of Consumer Data and Privacy

Underlying Assumptions

244. In the field of financial services the need to protect consumers' personal data against misuse or undue processing is particularly high. This requires general and/or specific rules and standards on the protection of personal data. Furthermore, specific provisions might be needed to ensure adequate privacy and protection of personal financial data.

245. It is important that consumers be aware which data are processed by financial services providers and the purposes thereof.

246. Since the sharing of consumers' personal data amongst financial services providers might be beneficial for consumers as well as for the financial system (e.g. to enhance responsible lending and to prevent fraud and enhance accountability), arrangements are required to facilitate such sharing while avoiding detriment to consumers. Data sharing is in accordance with relevant national laws and available mechanisms under data protection laws (e.g. standard contractual clauses, binding corporate rules). The amount of data shared should be limited to that which is necessary for the specific purpose and is subject to appropriate data protection safeguards, including appropriate security measures.

Key Themes

5.1 Protection of personal data within the financial services providers

Effective Approaches¹⁰

Common

247. When processing personal data, financial service providers comply with the principles set forth by applicable privacy and data protection laws and/or related provisions in other cross-sectoral or financial laws and regulations. This includes, but is not limited to the lawfulness and fairness of data collection, the data quality, the lowest amount of the data needed, the proportionality of the processing in respect of the legitimate purpose pursued, the compliance with transparency duties and accountability (e.g. privacy impact assessment) obligations, any obligation to notify security breaches to supervising authorities (e.g. DPA's and/or central banks), and the respect for the data subjects' rights.

248. Personal data protection authorities (DPA) are responsible for overseeing compliance with relevant provisions of privacy and/or data protection laws, including but not limited to the handling of complaints, the reception of personal data breaches (security breach notifications) and the protection of the rights of data subjects. Data Protection Officers (DPO) have the power, resources and technical expertise necessary to carry out their tasks effectively and make decisions on an objective, impartial and consistent basis.

249. The legal framework provides for a set of effective and dissuasive sanctions and remedies in cases of non-compliance with privacy and data protection obligations, rights and principles.

250. Data subjects can exercise their rights in respect of personal data related to them at different levels. Without prejudice of possible additional dispute resolution schemes, the consumer may first

¹⁰ The approaches specified here apply to section 5.2. when relevant

make a complaint with the financial services provider and, in case of no or an unsatisfactory answer provided in due time, with the DPA or other relevant authority (the financial regulator/supervisor and/or financial ombudsman).

251. Financial services providers formulate awareness programmes and security breach assessment and notification mechanisms to communicate the data security policies to staff as well as to promote within the institution the importance of protecting personal data on an on-going basis.

252. Unless the processing is based on a clear legal obligation or is necessary for the performance of a contract to which the data subject is a party, data subjects are provided with an opportunity to give their informed consent before sharing their personal data with third parties. Moreover, consumers are provided with all relevant information relating to how their personal information will be processed (e.g. collected, used, disclosed, data mining and profiling) in order to allow them to make informed choices with respect to how their data is shared with third parties and with financial services providers. Data subjects are given the freedom to consent, including the right to withdraw their consent at any time.

253. Financial services providers inform their consumers of unauthorised access to, and/or loss, destruction or alteration of their personal data and notify any personal data breach to the personal data protection authority or any other supervisory authority(ies) under the law and in accordance with the guidance given by the supervisory authority.

Innovative/emerging

254. Subject to national data protection laws, specific codes of conduct and/or guidance by the DPO may be issued by financial services providers in cooperation with DPA and/or financial authority or other authorities, in order to implement data protection principles across the financial services sector.

256. Financial services providers may have to ensure that a DPO appointed, and he/ she ensures in an independent manner, the internal application of the provisions of privacy and data protection laws, and the handling of any issues which relate to the protection of privacy or personal data, in particular in monitoring the implementation and application of adequate data protection policies.

257. Financial services providers are required to implement adequate technical and organisational security measures appropriate to the risks represented by the processing and the nature of the data to be protected. Consumers' data must be protected from accidental loss, alteration, unauthorised or accidental access, destruction, use, modification or disclosure, in accordance with the guidelines given by the relevant authority.

258. Where a processing operation is to be carried out on behalf of a financial services provider, the financial service provider should select a processor that provides appropriate safeguards to meet the requirements of relevant laws, regulations, codes and standards that may apply to data protection and the instructions of the financial services provider, in particular in respect of security measures.

259. Financial services providers ensure that any authorised agents to which some part of delivery of the financial service(s) is outsourced follow adequate data handling procedures, including through control procedures, contracts, physical and logical digital security requirements, and training and supervision of such agents, intermediaries, or outsourced service providers.

260. In order to prevent the misuse of personal data, a set of rules and procedures is to be implemented by financial services providers.

261. Financial services providers ensure that adequate controls are in place and that *ex post* checks on the legitimacy of data accesses, on data integrity and on the electronic procedures are regularly carried out and any issues identified are addressed.

262. Financial services providers disclose to data subjects in a comprehensible fashion and as simply as possible their rights with respect to their data, how the financial services providers and their authorised agents will use/process/store the data, and what remedies are available to the data subjects in the event of personal data breaches. An effective disclosure process is particularly important for data subjects who are inexperienced in the use of formal financial services (and are thus less likely to be aware of the data privacy and security risks), and for those receiving services through innovative means such as agents and/or digital channels.

263. Financial services providers adhere to rules governing profiling, data mining, marketing and sale of financial services through use of new technologies and social media. Financial services providers adhere to laws, regulations and other restrictions on marketing of unsolicited financial products or services.

5.1.2 Credit reporting systems' data sharing¹¹

Effective Approaches

Common

264. Credit reporting systems (CRSs) gather relevant personal data related to credit from credit reporting data providers (CRDPs) as well as, where appropriate, from other legitimate sources to ensure an effective data sharing system. CRSs are responding to impartial rules regardless of the nature of participants (on equitable basis), and are supportive of responsible borrowing and lending activity and consumers' rights.

265. CRSs adopt specific measures to ensure an adequate level of data quality - in terms of accuracy, and update – and to safeguard personal data confidentiality.

266. CRSs ensure, at a minimum, the consumer rights:

- To be appropriately/fully informed regarding the processing of personal data related to them, in particular, where appropriate, in respect of the possible sharing of their personal data with relevant third parties, the exact purposes and conditions of collection, processing and distribution of data held about them and on the related confidentiality regime adopted.
- Where the collection of data is not mandated by the law or other relevant regulation, to have an opportunity, where appropriate, to give informed consent that their data be shared with relevant third parties.
- To access to data held about the consumer in CRSs (using to the extent possible user-friendly measures), to promptly check the data correctness. The data access, as a service ensured by Credit Reporting Service Providers (CRSP, e.g., central banks or other relevant entities/authorities that

¹¹ “Credit reporting systems” (CRSs) comprise the institutions, individuals, rules, procedures, standards and technology that enable information flows relevant to making decisions related to credit and loan agreements.

manage the database) to consumers that build trust and ensure transparency, is free of charge or at reasonable charge. The access to data is allowed to consumers without time limits.

- To have a prompt correction of data inaccuracies or the deletion of data unlawfully collected in order to reduce the permanence of erroneous or illegitimately processed data in the CRSs. The rectification/deletion process is straightforward and inexpensive for consumers.

267. Without prejudice for other data dispute resolution mechanisms (judicial or extrajudicial), CRSs ensure a fair resolution of consumers' extrajudicial complaints. The process provides for:

- a direct complaint to the CRDP responsible for the data inaccuracies and, in case of no or unsatisfactory answer, a proper complaint to CRSP (e.g. central bank or other entities/authorities which manage credit databases) or, where appropriate, to personal data supervisory authority.
- prompt CRSs' actions towards the CRDP responsible for the data inaccuracies (data check, ask for clarifications and verify the receipt of corrections and their compliance with regulation).
- prompt replies to disputing consumers on CRSs' actions and on the results of data correction activity.

268. Within limits established by law at the national level, access to CRSs data is available to respective central banks, financial supervisors and other relevant authorities to perform their institutional tasks, provided that adequate requirements for the safeguard of data confidentiality are in place.

Innovative/emerging

269. According to the legal and/or regulatory framework, CRSs clearly define the lawful purposes for which personal data are collected and disclosed and the conditions under which data processing takes place in conformity with the law. CRSs clarify, at a minimum, that:

- the data access by CRDPs must be consistent with the CRSs' purpose of protecting credit and limiting the relevant risks, and in particular, for assessing data subjects' financial status and creditworthiness.
- the data usage for marketing purposes (such as for offering or advertising the availability of goods, facilities or services to consumers) is allowed only if it is permitted by or is undertaken in a manner that is consistent with applicable law/regulations and subject to the consent of the consumers.

270. CRSs' gathering of accurate, timely and relevant data on borrowers' financial behaviours, in order to promote responsible lending activity towards consumers and ease their access to the credit market. CRSs may include, within the limits established by law, both positive and negative data on a systematic or on-going basis (e.g. data on the on-time credit payments and on payments in arrears).

271. CRSs retain personal data for a period of time that is proportionate to the purposes established by applicable laws/regulations and in conformity with laws/regulations concerning those retention periods.

272. According to the general and/or regulatory legal framework, CRSs define the proper time series data that can be disclosed to users (e.g. CRDPs, authorised third parties, regulators). Personal

data is available to users for a sufficient period of time which is proportionate to the purposes for which the data is disclosed to them and used (to assess data subjects' financial status and creditworthiness or their reliability and timeliness of payment).

273. CRSs include measures to protect, in daily operations, personal data against any loss, corruption, destruction, misuse and undue access by unauthorised subjects. Among other things, these measures include:

- adequate processes to identify data subjects in the CRS and to control credit data, to prevent or reduce negative consequences on the consumer's creditworthiness assessment derived from data inaccuracies. They include identity requirements, data check and validation phases (e.g. logical-statistical checks and cross-checks with other information derived from other sources);
- specific arrangements to protect consumers' personal data from security risks related to data handling and transferring which may create mishandling or misplacement in CRSs; the arrangements include, for instance, encryption systems for data sharing within CRSs and logging systems to record who (only authorised subjects performing activities consistent with the aims for which data are collected) and when he/she accessed the personal data;
- specific arrangements on the frequency of data updating by financial services providers (on a systematic basis/day by day) and tools to ensure an effective updating activity. The correction of errors should be promptly done by responsible participants and promptly disclosed by CRSs to all participants who have seen the previous, erroneous consumers' data; and
- when CRSs provide additional services such as credit scores on consumers or statistical credit risk models, based on automated techniques and systems, factors as well as the algorithms used to calculate marks and/or scores are verified regularly and updated; factors that may have impact on the credit scores are made public or communicated to consumers.

274. CRSs ensure that consumers have the right to be informed when the first CRDP provides a CRSs negative data on a consumer's financial behaviour, which can affect their access to credit and other users decide to deny credit to consumer on the basis of credit data stored in CRSs. Consumers are informed of the name and contact details of the relevant CRS.

275. CRSs collect qualitative information (by means of a flag on personal data stored in databases) on the existence of on-going disputes between data subjects and participants on the legitimacy of data processing or on the data correctness.

Principle 10: Competition

Underlying Assumptions

276. Other things being equal, in a more competitive environment where firms meet the needs of engaged and informed consumers, consumers will ultimately be better off. Prices will be lower, quality higher, and innovation forthcoming.

277. Competition places pressure on producers to operate efficiently. More effective competition in financial markets can promote innovation thus providing consumers with a broader choice of products and services of improved quality and lower price.

278. When there is a case for collective action to benefit consumers, this is typically provided for in competition law by exemptions, or authorities can give guidance. Competition law has a consumer protection function: it protects consumers from businesses either singly or collectively abusing their market power. Competition law can accommodate measures that may restrict competition but have offsetting efficiency or other consumer benefits.

279. The relationship between the objectives of effective competition, consumer protection, and financial stability is complex. Effective competition alone does not necessarily deliver either consumer protection or financial stability, but for the most part the objectives are mutually supporting rather than in tension. Competition can be promoted by increasing contestability in the financial sector. The presence of likely, timely, and sufficient entry and expansion in a market provide an important competitive constraint on firms and incentivise innovation. This also includes the orderly exit of institutions from the financial sector.

280. There is a role for public agencies (including the national competition authority, financial regulators/supervisors and other bodies such as the telecommunications regulator/supervisor) in promoting effective competition in financial services, as well as addressing anti-competitive behaviour. The competition issues and relevant agencies and roles will evolve with innovation in financial markets, e.g. the issue of inter-operability as financial services are increasingly accessed via mobile phones.

281. The financial sector is unique due to the necessity to balance competition with financial stability. Regulatory and/or supervisory measures nominally aimed at financial stability and market conduct, are closely associated with the goal of enhanced competition.

282. Consumers in financial services markets are particularly inert, and measures, which increase a consumer's ability to shop around, compare and switch, can encourage market discipline and help to achieve better consumer outcomes.

283. Improved transparency and disclosure helps facilitate price and product feature comparisons. However, provision of information is not always sufficient for good consumer outcomes. Financial services providers' compliance with regulations and rules of conduct is necessary to ensure that the appropriate product and/or service are sold to the consumer.

284. Disproportionate or overly intrusive regulation (e.g. regulations around entry or around product design) can stifle innovation. Regulation should be proportionate to the problem it is trying to solve.

285. Consumers need access, irrespective of their socio-economic characteristics, to financial products and services so that they can fully participate in the economy and perform essential

operations. Basic access which does not entail excessive costs for consumers minimises the risk of financial exclusion.

Key Themes

6.1 Regimes and Institutional Architecture

Nationally and internationally competitive markets should be promoted in order to provide consumers with greater choice amongst financial services and create competitive pressure on providers to offer competitive products, enhance innovation, and maintain high service quality

Effective Approaches

Common

286. Competition authorities, which may be cross-sectoral, have responsibility for ensuring markets work well for consumers. They are tasked with the power to investigate competition-related complaints, and to bring public enforcement action against anti-competitive activities. Competition authorities address structural issues, for example, mergers, and have the power to prohibit or block any merger which is at risk of significantly impeding effective competition.

287. Mechanisms are available to facilitate the sharing of information between relevant authorities on matters affecting competition in financial services.

288. Financial regulators/supervisors with responsibility for transparency, market conduct, consumer protection and/or market integrity, in exercising their functions, may be required to take into account the need to enhance competition and financial innovation.

289. Regulators/supervisors can intervene to promote effective competition using a number of measures, including:

- policy or regulatory changes;
- rule-making, including changes to or potential withdrawal of existing rules (for instance rules on disclosure of contractual terms);
- using firm-specific enforcement powers;
- publishing guidance; and
- proposals for enhanced industry self-regulation.

290. It is fairly common for laws or regulations to cap or ban unfair charges including exit charges that can inhibit switching. Regulators may also want to intervene on concerted action by financial services providers, price structures and bundles, that obscure or inhibit competition, e.g. drip pricing, bundling, contingent fees (“small print” charges), to ensure prices are clear and comparable

291. These issues aside, it is rare for regulators to intervene on a simple headline price, e.g. mortgage rate, insurance premium. A notable exception is high cost credit, where caps have been introduced in many jurisdictions. Other exceptions could include standardised products designed to meet a particular social policy objective, e.g. basic bank accounts.

292. Structural intervention is considered a last resort measure but it may be used, for instance, state aid divestments to reduce market share.

Innovative/emerging

293. Regulators and supervisors may be required to consider the potential or actual impacts of their regulations/acts/codes on competition, for example, by impact analysis and review of the regulatory regime.

294. In some jurisdictions, the financial regulator/supervisor may have an explicit objective to promote competition and/or powers to enforce competition law. In this case, coordination with the competition authority is important.

6.2 Comparability and Access

Consumers should be able to search, compare and, where appropriate, switch between products and providers easily and at reasonable and disclosed costs.

Effective Approaches

Common

295. Information and support is needed for consumers to exercise effective choice. Even without an explicit competition remit, regulators and supervisors can enable consumers to exercise effective choices. This may be through, for example, mandating the provision of information, facilitating comparisons, prompting/facilitating switching, tackling unfair exit charges, or product complexity, and so on.

296. Regulators/supervisors, financial services providers, or independent product aggregators, employ a number of tools in order to foster comparability and switching, and calculation tools for certain products.

297. Tools like these can help consumers better understand their options and make active, informed decisions. Regulators/supervisors may also have a role in ensuring intermediaries do not distort consumer choice, e.g. where there are conflicts of interest in certain business models.

298. To help consumers make more informed choices and to facilitate comparisons, regulators and supervisors may also promote transparency of fees, charges and product features and information that is standardised, timely and of good quality.

299. Improving the transparency and comparability of fees and charges together with facilitating a smooth switching process enables consumers to choose the most appropriate product, benefit from better offers and lower costs.

300. Regulators/supervisors provide online tools that allow consumers to verify the regulated status of financial services providers.

301. Financial services providers when looking to enhance consumers' ability to search, compare and switch, are mindful of consumers' differing attributes in the aspects of, for example, financial literacy and education.

302. Consumer organisations can provide free (or at low cost) and impartial information on financial products and consumer rights, as well as useful tools to compare the costs and benefits associated with particular financial products and services.

303. Competition authorities and financial regulators can undertake investigations - “market studies”-studies” where markets do not appear to be competitive and/or meeting the needs of consumers. Results of such studies may be published, thereby enhancing transparency and comparability of practices. In some cases, the issue is not lack of competition, but competition that is not servicing customers well. For instance, this might be where competition drives complex pricing, including front book – back book pricing and teaser rates.

Innovative/emerging

304. Insights provided by behavioural economics enhance understanding on how consumers make financial decisions and the inhibitors to competitive outcomes. Behavioural economics can assist in the design of more appropriate remedies, thus allowing more effective promotion of competition in financial markets.

305. Switching can be written into legislation, for example, mandating that consumers can switch bank account without penalties, requiring that loan portability is free of charge for consumers, or mandating annually maturing accounts such that customers must make active decisions. Some jurisdictions have a statutory switching code/practice, the purpose of which is to make the process of switching bank accounts easier and more efficient for consumers and hence promoting competition.