

18 July 2022

## ESMA Issues Public Statement on Results of 2021 Common Supervisory Action on Product Governance

### Background

The Product Governance requirements introduced by MiFID II have proved to be one of the most important elements of the MiFID II investor protection framework, aiming at ensuring that firms act in their clients' best interests during all stages of the investment product's life cycle and preventing mis-selling. As part of the Product Governance requirements, a target market of end clients must be identified and periodically reviewed for each product, as well as a distribution strategy that must be consistent with the identified target market.

In 2021, the Conduct Supervision ('CS') function within the Malta Financial Services Authority ('MFSA') has participated in the ESMA Common Supervisory Action ('CSA') on MiFID II Product Governance requirements. In order to assess firms' compliance with the Product Governance requirements, MFSA Officials have conducted a number of inspections at a selected number of investment firms.

### Scope

The aim of the CSA was to perform an assessment, using one common approach across all member state participants as indicated by ESMA, with the aim of building a common supervisory culture amongst National Competent Authorities.

Such an initiative helps in ensuring consistent implementation and application of EU rules and enhance investor protection, amongst other objectives.

### Participants

26 EU and EEA National Competent Authorities have participated in this exercise and a total of 214 firms have been included in the CSA sample. The overall sample of 214 firms spans across 26 jurisdictions and comprised of 15 manufacturers, 122 distributors and 73 firms acting both as manufacturers and distributors.

All National Competent Authorities have shared knowledge and experiences at the level of ESMA throughout 2021, to ensure supervisory convergence in the way they supervise the MiFID II product governance requirements and, ultimately, enhance the protection of investors across EU and EEA Member States.

## **Main Findings**

A number of common findings have been identified and ESMA has published a public statement containing information on the Product Governance CSA and the main findings emanating from this exercise. This information can be found within the [ESMA's Public Statement on the 2021 CSA on Product Governance Requirements](#). All licensed entities are encouraged to read through this Public Statement.

## **Target Audience**

The content of this document is aimed at investment firms and credit institutions performing investment services and activities. All firms must ensure compliance with all relevant Product Governance requirements. It is thus expected that all firms, including those firms that were not subject to an inspection by the MFSA, bring their policies, procedures and practices in line with the main findings of this CSA.

## **Way Forward**

Based on the results of the CSA, ESMA has decided to review its guidelines on the MiFID II Product Governance requirements to address the most relevant areas where a lack of convergence has emerged and to complement the guidelines with relevant examples of good practices that emerged from the CSA. The review also aims to align the guidelines to the revised MiFID II Delegated Directive on the topic of sustainable finance and to the revised MiFID II in the context of the Commission's Capital Markets Recovery Package, and to incorporate the advice received from ESMA's Advisory Committee on Proportionality. The Consultation Paper on the revised ESMA guidelines includes further details and analysis of the results of the CSA and on how ESMA proposes to integrate them in the guidelines themselves to improve convergence and therefore the level of investor protection across the EU.

The consultation closes on 7 October 2022. ESMA will consider the feedback it receives to the consultation in Q4 2022 and expects to publish a final report in Q1 2023.