

with and amongst NCAs, who are collectively and actively engaged with ESMA with the aim of achieving common goals.

Overview of the execution of the CSA by NCAs

6. 26 EU and EEA NCAs participated in this CSA and 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.
7. A total of 214 firms were included in the CSA sample, 115 of which credit institutions (CIs), and 99 investment firms (IFs). NCAs used different criteria to select meaningful samples for their respective markets. Criteria used included a firm's total number of clients, the market share in the provision of investment services, revenues, the evidence from prior investigations, etc. Most NCAs deployed a mix of criteria to identify the firms that would ensure a proportionate and meaningful coverage of their national markets.
8. The overall sample of 214 firms across 26 jurisdictions comprised 15 manufacturers, 122 distributors and 73 firms acting both as manufacturers and distributors.
9. Notwithstanding the challenging circumstances of the COVID-19 emergency, various NCAs did not limit themselves to purely desk-based approaches, but also made use of video/audio conferencing tools to perform remote inspections, to testing the overall effectiveness of firms' policies and procedures and assessing products' target markets and distribution strategies.

Main findings

10. The 2021 CSA has shown that firms generally define a target market for the products they manufacture and/or distribute and that firms follow the list of five target market categories set out in the ESMA guidelines. However, in some cases the definition of a target market appears to be approached as a formalistic exercise as it is done at an insufficiently granular level and with the use of unclearly defined terms.
11. Furthermore, the definition of a target market does not always translate into a compatible distribution strategy that enables the product to reach the identified target market.
12. Finally, further areas of improvement have emerged with regard to the requirements:
 - to perform a scenario analysis as required under Article 9(10) of the MiFID II Delegated Directive. For example, a lack of convergence has emerged on how firms perform such an analysis and it is sometimes unclear how these scenarios are actually used by firms for the product's target market identification;
 - to perform a charging structure analysis as required under Article 9(12) of the MiFID II Delegated Directive, a key investor protection requirement on which ESMA had already provided guidance to firms in the form of dedicated Q&As. For example, it

emerged that manufacturers' procedures insufficiently describe how a product's cost structure is evaluated to ensure compatibility with the product's target market;

- to review products. For example, it emerged that such reviews are not always performed frequently enough and with an adequate scope to verify if the financial instrument remains consistent with the needs, characteristics and objectives of the target market;
- to exchange information between manufacturers and distributors. For example, a significant number of firms provide reports to the product manufacturers only at the latter's request and not on a proactive basis.

Next steps

13. 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 (ACP). The Consultation Paper on the revised ESMA guidelines⁴ 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.
14. NCAs will undertake follow-up actions on individual cases, where needed, to ensure that regulatory breaches as well as other shortcomings or weaknesses identified are remedied.
15. ESMA reminds market participants that they should ensure compliance with all relevant MiFID II regulatory requirements at all times.

⁴ ESMA35-43-3114.