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Product Governance Regime of MiFID II as the Managerial Application of the PDCA Cycle

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Abstract: Part of the investor protection regulation under MiFID II is product governance, which stipulates that securities dealers should only offer customers investment instruments that meet their needs and objectives and are compatible with the target market. This regulation requires regular evaluation, review and revision of the investment instruments offered in the light of the identified target markets and the offering system. The aim of this paper is to transform the requirements of product governance regulation in investment services as a governance and management role. The research question addressed the possibility of incorporating product governance regulation requirements into the PDCA cycle, which can be used to continuously improve investment service delivery processes. Secondary data included relevant information from Web of Science database articles and legal information on product governance regulation and the PDCA cycle. By analyzing this data, common elements were sought to interpret the requirements of product governance regulation using the PDCA cycle. The results suggest that it is possible to apply product governance requirements to the PDCA cycle and incorporate them into management practice of adherence to this regulation, particularly the process of offering investment instruments, creating opportunity for extracting business-related added value from regulation.

Keywords: continual improvement; investments; PDCA cycle; product governance; MiFID II; regulation

JEL Classification: D18; G18; M3

1. Introduction

According to the part of investor protection regulation referred to as product governance under MiFID II, only investment instruments that satisfy the requirement of a compatibility between the characteristics, objectives and needs of those customers and the so-called target market (characteristics) of the investment instruments should be offered to customers by investment firms. The purpose of this regulation is described in more detail in subsequent legislation which, inter alia, introduces requirements for regular assessment, review and revision of the investment instruments offered in the light of the identified target markets and the reviews of system of offering investment instruments. Such legislation imposes de facto a regulation of direct marketing of specific investment instruments to general public, as it was mentioned before, specific investment instruments should be offered only to relevant and compatible groups of clients. This "compatibility" is based on the target market definition covering several aspects. Moreover, the requirements for regular assessments are the part of regulation. As such regulation creates additional requirements on internal processes of

investment firms, it seems, especially in current VUCA world in association with disruption of financial sector, be inefficient and ineffective that process changes will be utilized only for regulatory purposes without harvesting the possible relationships to other, business oriented, activities of investment firm. This intention is also related to Regulation Technology (hereinafter referred to as "RegTech") industry that refers to the use of technology to facilitate compliance with regulatory requirements in various (financial in this case) industries.

In this research article, author intend to address the priority of utilization of regulatory requirements for fulfilling the business goals of investment firm.

The paper is structured to 4 sections. Firstly, this section, Introduction, provides a brief idea on researched topic, its relevancy and structure of the paper, accompanied by description of current body of knowledge pertinent to the goal of the paper. Second section describes methods and data used for the research. Third section of the paper is very important as it states the results and discussion of gathered evidence and knowledge. Last section, the Discussion, summarizes the researched topic and asserts future possible ways of research, expanding the knowledge and filling the research gap.

1.1. Product Governance under MiFID II

On 20 October 2011, the European Commission adopted a legislative proposal for the revision of MiFID which took the form of a revised Directive and a new Regulation. After more than two years of debate, the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (hereinafter as "MiFID II") repealing Directive 2004/39/EC, commonly referred to as MiFID II and MiFIR, was adopted by the European Parliament and the Council of the European Union. They were published in the EU Official Journal on 12 June 2014. Its aim is to enhance financial stability and investor protection while improving market efficiency and competition. MiFID II was approved by the European Parliament in 2014 and entered into force on January 3, 2018.

Relevant provisions of EU legislation pertinent to product governance are mainly following: Recital 71 of MiFID II; Article 9(3) of MiFID II; Article 16(3) of MiFID II; Article 24(1) and 24(2) of MiFID II and Articles 9 and 10 of the Commission Delegated Directive (EU) 2017/5932 (MiFID II Delegated Directive).

Regarding relevant local legislation, the basic legislation of investment services might be found Act No. 256/2004 Coll., on Capital Markets Undertaking Act, as amended (hereinafter as "Capital Markets Undertaking Act") and Decree No. 308/2017 Coll. on the more detailed regulation of certain rules in the provision of investment services issued by the Czech National Bank (hereinafter as "Decree 308/2017").

Important common denominator for application of product governance rules are Guidelines on MiFID II product governance requirements (ESMA, 2018) provided by European Securities and Markets Authority (hereinafter as „ESMA"). ESMA also scrutinize current guidelines based on the Common Supervisory Action conducted (ESMA, 2022; ESMA, 2023).

Product governance regulation aims to protect investors and promote market integrity by ensuring that financial products meet the needs of their intended target market and are

distributed appropriately. Colaert (2020) argue that The MiFID II product governance regime requires financial institutions to identify a target market of investors for all products they design or offer to clients, and to sell those products, as a rule, within the target market only. Although the aim of the regime – reducing misselling – is commendable, it has been implemented in a less than perfect way. After briefly describing the MiFID II product governance rules, this contribution discusses four major shortcomings, which have a detrimental effect on investor protection and the level playing field between financial institutions. The author proposes small amendments, which not only deal with those shortcomings, but also alleviate the compliance burden for the sector and lessen the regime's paternalistic edge. Hobza and Vondráčková (2019) add that while offering and selling unsuitable financial instruments has been so far prevented primarily by disclosure and other duties associated with the actual moment of sale of the financial instrument or the immediately preceding period, product governance covers the entire chain of interconnected steps from manufacturing of the financial instrument, through its sale to after-sales services. Related duties are imposed both on investment services providers that create, develop, issue or design financial instruments (i.e. manufacturers of financial instruments), as well as on investment services providers that offer, recommend or sell financial instruments to clients (i.e. distributors, as entities, incl. financial intermediaries that are in immediate contact with the client). Some of the duties apply only to manufacturers or distributors, others apply to both of them. From product governance measures, which have a common purpose to reduce the potential risk of failing to comply with investor protection rules throughout the life and sales cycle of a financial instrument, the biggest attention is paid to the target market of the financial instrument. Velliscig (2018) describes product governance as a change in retail customer protection: in this area of the law, an eventual convergence of solutions in client protection initiatives may be found. In a context oriented towards acting in accordance with the best interest of customers, EU legislator currently seeks a new "frontier" in the protection of retail customers and tends to develop new tools and strategies in addition to the disclosure of information and conduct of business rules, in order to remove potentially detrimental products from the market. This contribution examines the "product oversight and governance" principle intended to remedy problems associated with products misselling. In the details, this trend is analyzed with reference to the upcoming insurance distribution directive. Loonen and Pattisellano (2020) shows that product governance requirements were introduced to ensure that investment firms acting as manufacturers and/or distributors of financial products or instruments act in their clients' best interests throughout the product's life-cycle. MiFID II distinguishes between investment firms that manufacture financial instruments and those that distribute them. A firm qualifies as a manufacturer if it creates, develops, issues, or designs a financial product. A distributing investment firm is one that offers, recommends, or sells financial products to clients. Both manufacturers and distributors must have product governance arrangements and review processes in place. A key requirement of MiFID II is that investment firms must assess the target market for the investment products they distribute to clients. The distribution strategy should align with the target market of these products. This requirement applies to all clients, but the outcome of the product governance process may

differ depending on whether the products are offered to professional clients or retail clients. Certain arrangements may not be offered to retail clients, and some investment products may be eligible only for professional clients due to their complex risk profiles. When offering services to professional clients, the requirements for product governance may be less comprehensive compared to those for retail clients, as per ESMA guidelines. Overall, the aim of these product governance requirements is to enhance investor protection and ensure that financial products and services are suitable for their intended market and clients.

Where an investment firm needs to assess the target market, either in capacity of manufacturer or distributor, the firm must use the categories defined by ESMA (2018) in its guidelines. The guidelines for defining target market of investment instrument include factors such as:

- The type of (potential) clients to whom the product is targeted;
- The investment knowledge and experience present;
- The financial situation of the (potential) client with a focus on the ability to bear losses;
- The risk tolerance and compatibility of the risk/reward profile of the product with the target market; and
- The (potential) client's objectives and requirements (ESMA, 2018).

Marcacci (2017) sees the product governance regulation as a current example of European Regulatory Private Law ("hereinafter as "ERPL") phenomenon as it sets a world-wide (proto)normative framework regulating intra-firm processes. Under this premise, product governance rules may be viewed as the most recent example of ERPL. Ewing (2018) adds that product governance regime seems to have originated from the retail structured product environment. Rosie (2017) took its analysis to Australia and analyzed specific reforms related to "product regulation" laws. This article offers an analysis with economic insights into the UK's approach to product regulation, highlighting three main arguments. Firstly, it suggests that managing product governance is effectively a regulatory tactic aimed at preventing participants in the market from creating products that amplify flaws in the retail financial services market. Secondly, it argues that the powers to intervene in product governance should be activated only after market reactions to these governance practices are understood, and only if such intervention is likely to enhance the market's situation. Thirdly, it contends that interventions in product design (such as prohibiting products or dictating their conditions) become necessary only if market players do not adhere to the set standards of product design as mandated by product governance rules. Nonetheless, due to the practical challenges in strictly applying interventions based on violations of product governance rules, the article suggests that this link between product governance and intervention actions should serve as a general guideline rather than being formally encoded into legislation. Chong (2023) provided most current review when elaborated on Design and Distribution Obligations (hereinafter as "DDO") launched by Australian lawmakers. It is a framework aimed at enhancing protections for consumers through the introduction of new governance requirements for those issuing and distributing financial products. Although the DDO framework is still in its early stages, the Australian Securities and Investments Commission (hereinafter as "ASIC") has already

marked its enforcement as a principal focus area, a stance it plans to maintain in the coming years. This article evaluates the capability of the DDO framework to fulfill its primary goal of helping consumers' access suitable financial products while minimizing harm to them. This evaluation includes an analysis of the framework's structure, the policy discussions that shaped its formation, and how ASIC has applied the DDOs thus far. Representing the first in-depth academic investigation, this study scrutinizes both the strengths and weaknesses of the DDO framework's structure and gauges the effectiveness of ASIC's implementation efforts.

The core of product governance risk is misseling. Misselling can also take place with respect to regulated products, when consumers purchase what is unsuitable for them, advised or otherwise. Investors can also be let down by severe losses due to adverse market forces, such as during the onset of the global financial crisis, or as a result of investment managers' sub-optimal strategies (Chiu, 2021).

2.2. Continuous Improvement and PDCA Cycle

PDCA is the foundation of continuous improvement or kaizen. Teams implement improvements (Do) to achieve the targets. Then they measure (Check) the change to evaluate performance against the target. If the team has achieved a measurable gain, it standardizes (Act) the new method by updating the standardized work. This ensures the improvement is stable (Lean Enterprise Institute, 2022). PDCA is an iterative design and management method used in business for the control and continual improvement of processes and products. The steps of the cycle then become "plan" – "do" – "check" – "act". PDCA is a continuous improvement cycle, which includes iteration to continuously promote the excellence. The basis is written as "hypothesis" – "experiment" – "evaluation" or "plan" – "do" – "check". The last – act - step involves addressing any deviations in our process in order to continually improve our performance. This step takes the form of an analysis of the deviations in order to understand their root causes. The act step also provides a mechanism for continuous improvement (Liao, 2023). Unsuccessful PDCA applications are the result of many reasons such as: Poor studies on a current problem and its obstacle, erroneous data collection, wrong or improper use of quality tools, fail in defining root causes, insufficient analysis, process non-standardization, or no sharing learning experience before and after the PDCA implementation (Nguyen, 2020). Digitalization offers businesses a transformative opportunity for enhanced flexibility, agility, and customer responsiveness. Prioritizing quality in this transformation is crucial for customer-oriented success. The shift to digital practices is imperative to bridge the gap between traditional quality methods and a digitalized engineering value chain. While existing literature emphasizes quality and continuous improvement, insights into integrating quality practices in a digital context are limited. Addressing challenges like shorter time-to-market and increased complexity requires holistic adoption of digitalization across the PDCA quality cycle. The digitalization of quality practices should be viewed comprehensively throughout the value chain (Dutta et al., 2021). PDCA cycle is often accompanied in practice with other lean practices (Jimenez et al., 2019).

2.3. RegTech

" Higher regulatory compliance requirements, fast and continuous changes in regulations and high digital dynamics in the financial markets are powering RegTech (regulatory technology), defined as technology-enabled innovation applied to the world of regulation, compliance, risk management, reporting and supervision" (Grassi & Lanfranchi, 2022, p. 441). Europe's road to RegTech has rested upon four apparently unrelated pillars: (1) extensive reporting requirements imposed after the Global Financial Crisis to control systemic risk and change in financial sector behaviour; (2) strict data protection rules reflecting European cultural concerns about data privacy and protection; (3) the facilitation of open banking to enhance competition in banking and particularly payments; and (4) a legislative framework for digital identification to further the European Single Market (Buckley et al., 2020). Teichmann et al. (2023) argue that the Markets in Financial Instruments Directive (MiFID) II legislation, which has led to an increase in the number of RegTech companies. Although these systems of technology offer compelling compliance tools, they also pose significant risks: (1) inconsistent regulation, (2) cybersecurity and (3) legacy systems. Many banks have struggled to find solutions to keep up with increasing regulation and compliance (Solms, 2021).

3. Material and Methods

The aim of this paper is to transform the requirements of product governance regulation in investment services as a governance and management role.

Product governance requirements are connected also to repetitive regular reviews of given investment instruments and related processes. There is an implicit requirement for continual improvement in targeting adequate customers with offerings of investment instruments what evokes the PDCA cycle. Moreover, to fulfill product governance requirements, the various sets of data are needed and business model innovations based on digitalization of investment services creates these datasets. Answering of regulatory requirements by technology is the core of RegTech solutions. Moreover, the goal of investment firms is not only the fulfilling regulatory requirements, real business goals varies from increasing the shareholder value in long-term horizon to increasing the profit, margins or market share and product governance data might be useful for these goals.

Based on the literature review the following research gap has been identified: Absence of a structured analysis for understanding the interrelationship dynamics of purpose, data requirements and processes of product governance regulation in managerial practice and business goals of an investment firm.

The research question (RQ1) was: Is it possible to situate the requirements of product governance regulation within the PDCA cycle of continuous process improvement in the provision of investment services?

The paper uses secondary data. Secondary data represents relevant knowledge obtained from articles in the Web of Science database (hereinafter as "WoS"). As of November 1, 2023, small number of articles (14) resulting to key word query "product governance" in WoS (without any other filters on), with 4 of them excluded as they covered scope outside given product governance regime (insurance, pharmaceutical and forestry), resulting to 9 relevant

articles. Furthermore, secondary data on product governance regulation and PDCA cycle were used to answer RQ1. Through the analysis of these concepts and their subsequent generalization and synthesis, common elements were sought to interpret product governance requirements through the lens of the PDCA cycle.

The method of qualitative content analysis (hereinafter as "QCA") method was used on all data considered a product governance regulation (MiFID II, Capital Markets Undertaking Act, Decree 308/2017 and all cited ESMA sources). QCA can be a powerful method for analyzing legal documents and developing a deeper understanding of legal concepts and practices (Schreier, 2012). It allows researchers to identify patterns and themes within the data in a rigorous and systematic way, and to draw meaningful conclusions based on the analysis, mainly if it is accompanied by narrative, thematic and content analysis (Denzin & Lincoln, 2018). Following Barrett et al. (2005, p. 2), the QCA "*is not intended to celebrate the empirical detail*" but rather to identify new and emerging issues for study. The processing of data from WoS database might be characterized as textual narrative review, what includes characteristics (quality, findings, context, etc.) from reviewed literature (Lingeren et al. 2020). The sample strategy was systematic, but it was limited only to WoS database, what is also a limitation of the paper. The methods used in the article for both regulation and WoS sources are content analysis and thematic analysis of selected articles, followed by qualitative analysis (McColl-Kennedy et al., 2017).

4. Results

Results section is determined to explain the product governance regulation as a continuous development process with PDCA cycle application. In order to do so, first, the relevant provisions of product governance regulation of conducting activities by investment firm of regular, iterative manner, should be provided:

Investment firm in the role of *manufacturer* of investment instrument:

Sec. 9(1) of Decree 308/2017: Investment firm shall ensure that the person carrying out ongoing compliance monitoring (hereinafter referred to as "compliance") of the investment firm *regularly checks the system for the creation of investment instruments* in order to detect the risk that the securities dealer fails to comply with the obligations under Sections 8 to 10.

Sec. 10(3) of Decree 308/2017: Investment firm shall r*egularly evaluate the investment instrument it creates*, taking into account any events that could materially affect the potential risk to the designated target market. The investment firm shall consider whether the investment instrument continues to meet the needs, characteristics and objectives, including sustainability objectives, of the target market and whether it is distributed to the target market or to customers whose needs, characteristics and objectives are incompatible with the investment instrument.

Sec. 10(4) of Decree 308/2017: Investment firm shall evaluate an investment instrument before each subsequent issue or re-marketing if it is aware of an event that could materially affect the potential risk to investors and shall *assess at regular intervals whether the investment instrument is performing as anticipated.* Investment firm shall determine the *frequency of evaluation*

of an investment instrument based on relevant factors, including factors related to the complexity or innovation of the investment strategies being pursued.

Investment firm in the role of *distributor* of investment instrument:

Sec. 12(1) of Decree 308/2017: Investment firm shall *continuously verify and regularly evaluate its system for offering investment instruments* to ensure that it remains adequate and fit for purpose and, where necessary, take appropriate corrective action without undue delay.

Sec. 12(2) of Decree 308/2017: Investment firm shall *regularly evaluate the investment instrument it offers or recommends and the investment service it provides*, taking into account any events that could materially affect the potential risk to the intended target market. The securities dealer shall always assess whether the investment vehicle or investment service still meets the needs, characteristics and objectives, including sustainability objectives), of the intended target market and whether the intended sales strategy is still appropriate. Where a securities dealer determines that the target market for a particular investment vehicle or investment service has been incorrectly identified or that the investment vehicle or investment service no longer corresponds to the identified target market, in particular where the investment vehicle has become illiquid or highly volatile due to market changes, it shall change the target market and/or update the system for offering investment vehicles.

Sec. 12(3) of Decree 308/2017: Investment firm shall ensure that the compliance officer of the investment firm monitors the development and *regularly reviews the system for offering investment instruments and its significant changes* in order to detect any risk that the securities dealer fails to comply with the obligations under Sections 11 to 13.

There is no general obligation for manual or automated tracking prior to a marketing campaign. There is only an obligation to review the instrument before any further issue or re-launch if the product manufacturer identifies any event that could materially affect the potential risk to investors. If no such event is identified, a review need not be conducted on that occasion. However, other provisions imply an obligation to monitor the compatibility of sales with the target market on an ongoing or regular basis. With regard to the distributor of the product it applies in a similar vein. Such monitoring should be carried out on a regular basis depending on the complexity or innovative nature of the financial instrument or on anticipated changes in the target market. By this we mean an ongoing assessment at intervals to be set by the product manufacturer and the distributor, in practice always at least when a potential reason for reassessing the nature of the product in terms of the target market is identified. The practical design of the monitoring (whether automated or human) is a secondary consideration, and it is up to the manufacturer or distributor to decide which form of monitoring to choose. However, the intensity of the monitoring should increase depending on the product and the target market. The ESMA (2018) is clear in this respect on proportionality (e.g. articles 21, 38, 41 and 43 of the ESMA, 2018) and on the gradation (detail) of obligations depending on the nature of the service provided. The advice itself may contribute to monitoring. But even where it would not otherwise be provided, product management obligations imply a duty to communicate with the customer. In the review, the manufacturer and distributor of investment instruments should base the review on an assessment of the target market at the start of the product launch and should work with

aggregate data (in terms of sales and customers, by contrast, individual investment vehicle assessments will usually be necessary). As is clear from the articles 55 and 56 of ESMA (2018) attention should be paid in particular to sales outside the target market and in particular to the negative market. As also follows from the articles 57 and 58 of ESMA (2018), the review should, inter alia, assess these phenomena, their justification and, if necessary, suggest changes in the marketing strategy of the product concerned. The review should include, for more complex products, a questionnaire survey of a sample of customers for feedback (mentioned in Recital 20 of the MIFID II Implementing Directive and in article 57 of the ESMA, 2018). The frequency of the review is not fixed (e.g. annually) but is determined by the trader. It should be carried out periodically depending on the complexity or innovative nature of the financial instrument or on anticipated changes in the target market. Further actions to be taken by the manufacturer in the event of a 'triggering event' affecting the risk or return of the financial instrument (Czech National Bank, 2017; Decree 308/2017).

The key within these regular reviews is to, sufficiently, systematically and as scientifically as possible, analyze and explain all factors relevant for gaining objective results, i.e. regular reviews shall include decisions related to continual improvement opportunities and any need for changes to the product management processes (Herinková et al., 2023).

The idea of implementing PDCA cycle to compliance/regulatory issues is not totally new. The ISO 37301 standard provides a framework for organizations of all sizes and types to manage their compliance risks and ensure that they are operating within legal, ethical, and social boundaries. The standard is based on the PDCA cycle, which is a continuous improvement process used in many management systems. Such a model enables an organization to sufficiently establish, develop, implement, evaluate, and, if beneficial to the organization, maintain and continually improve processes. The common elements of a compliance management system fit comfortably into the four steps of the PDCA model. Leadership, governance, and culture are essential to the PDCA processes, so ISO 37301:2021 outlines understanding the organization and its context, planning, support, operation, performance evaluation, the role of leadership, and continual improvement.

Considering aforementioned thought on ISO 37301:2021 standard, it seems that it should be taken in account by relevant persons while defining product governance processes in an investment firm, as at the end of the day, the compliance with regulation is the minimum an investment firm must adhere to (as gaining additional business added value is not mandatory part of product governance regulation focus). If the requirements ISO 37301:2021 regarding management review inputs are applied to product governance process, it might be indicated that these review might include following attributes to identify any events that could materially affect the potential risk to the intended target market and adequacy of system for manufacturing/offering of investment instruments (this list is not full, as following the need for proportionality, one must take into an account the customer base, business model and investment instruments of an investment firm):

- The status of actions from previous reviews.
- Changes in external and internal issues that are relevant to the product governance process (e.g. target market, investment instrument, manufacturers of distributed investment instruments, 3rd parties to whom relevant processes are outsourced, etc.).
- Changes in needs and expectations of interested parties (manufacturers, distributors and especially the customers, etc.) that are relevant to the product governance process (e.g. target market, investment instrument).
- Information on the investment instruments performance, including trends in global, local and sectoral conditions, nonconformities, noncompliances and corrective actions (internal or external), monitoring and measurement results; audit results; supervision results.
- Opportunities for continual improvement.
- "Voice of the customers" via representative surveys of customer base.

The management review shall take into account the data infrastructure for making the conclusions (adequacy and effectiveness of existing controls and performance indicators).

5. Discussion

This chapter focuses on providing answers on research question RQ1, confronting it with existing knowledge and also sharing, in our opinion valuable, managerial implications.

The results indicate that it is indeed possible to transpose the requirements of product governance through the application of the PDCA cycle of continuous process improvement into managerial practice, in this case the process of offering specific investment instruments. This is based on regulation requirements. The current regulatory text does not provide complete direct guidance on how to measure and assess the adequacy of the investment instruments offered in terms of the identified target markets and the system of offering investment instruments. It is therefore essential to gather the "voice of the customer" in this area. It may be particularly important to collect customer information in the retention process. Customers themselves are an important part of the whole product management process, and the correctness of the target markets for investment instruments. Moreover, ISO 37301:2021 provides more detailed guidance on how to understand PDCA cycle within the management compliance systems. It is definitely a challenge to recognize the benefits and business value added by regulation and compliance with it, but there should be also a question whether we are trying to find it. As RegTech industry shows, technology might not be only utilized for ensuring compliance, but also to fulfilling the business goals of an organization. "*Compliance moves continuously in the focus of the corporate world, especially because of big business scandals with even bigger losses, but also as a result of the simultaneously increasing management and corporate liability for compliant organizational and operational action. A systematic and systemic approach such as the methodology of an integrated, holistic CMS seems to be an effective, practical instrument to ensure the 'duty to legality' in conjunction with the highest possible effectiveness of the compliance function within the 'second line of defense'*" (Westhausen, 2021, p. 348). Compliance is on ongoing process. Organizations can safeguard their integrity and

minimize noncompliance by embedding compliance in the values, behavior, and attitude of the organization and by keeping leadership involved, since they apply core values to follow throughout the enterprise. Organizations can develop and spread a positive culture of compliance by following ISO 37301:2021. This results in multifold benefits, including improved sustainability, enhanced business reputation, improved means of considering the expectations of interested parties, increased commitment to managing compliance risks, increased confidence from third parties in the organization's capacity to achieve success, and minimized risk of contravention. In our opinion, it is important to see regulatory changes and requirements as a management opportunity for innovation activities. Product governance regulation of investment firms should be recognized as the need for continual improvement in managing of misseling risk. In purchase behavior research, the personal dispositions of consumers can play a decisive role (Poler, 2022).

Regarding managerial implications, there are following issues worth to stress out for investment services providers:

- Regular reviews by product governance might be understood as a PDCA cycle of continual development of better offerings of investment instruments to customers.
- Regular reviews of target markets, based on sufficient data (surveys, data analysis, interviews, customers testing), leading to suitable offering of investments services, might be improving satisfaction of customers with chosen investments.
- Customers should be informed, why they are in the target market of some investment instruments (where is the intersection and compatibility between customers and investment instrument).
- Data regarding the opinions of customers who terminated investment services contract with an investment firm might poses valuable information for regular review of target market of investment instruments.

6. Conclusion

The research (e.g. Yeoh, 2019) highlights that only half of the EU Member States, including the UK, successfully incorporated MiFID II by its activation date on 3rd January 2018. In these initial phases, several initial challenges emerged, including issues related to reporting costs and charges, governance within firms, governance of products, reporting of transactions, ensuring best execution, and managing research. Given MIFID II's extensive reach and intricacy, many organizations struggled to meet their reporting requirements. And the regulatory pressure does not weaken. In response to these challenges, the lawmakers and regulators shall offer reassurances to firms that are making adequate efforts towards compliance, indicating that they would be met with fair treatment. Offering, recommending and selling the right investments to right customers is at the hearth of the product governance. This naturally requires having the right data about customers and subsequently leads to some kind of targeting. Targeting investment instruments more precisely to specific customers can enhance satisfaction and retention with current service providers. Personalization is crucial in improving customer experiences, but ethical handling of customer data is paramount for

privacy and security. Transparency in data usage and explicit customer consent build trust (Buckley et al., 2020). Legal protection of personal data is a challenge, requiring attention to fundamental rights. Ensuring the legal system adapts to the Digital Revolution is crucial for societal confidence. Precise data profiling is a key profit driver for the financial industry, but it poses risks such as data breaches, unfair pricing, and discrimination. The deeper and potentially more practically oriented research focused on target market obligations for financial products and their interaction with data protection rules, questioning if financial product governance rules may incentivize data profiling by service providers (Bednarz, 2022) might be a first avenue for future research. Leveraging technology and data analytics for personalized investment instruments creates a customer-centric experience that enhances satisfaction and retention, strengthening providers' positions. The naturally occurred gap between risks regulation aims to manage and real-life perception of these risks by customers is another line of inquiry for future research (e.g. finfluencer marketing and promoting specific investment instruments by influencers – does regulation keep up the trend?). In general, there is not much research covering product governance and the area is in the need of more research to shed some light on well-intended but hard to accomplish customer protection practices. In this context, the paper showed that to fulfill the idea of the regulation, it must be translated to managerial practice. Product governance regime is not a set of once in life obligations, it is never-ending process of ensuring that investment instruments matches the customers and risk of misseling is covered. At the end, significant deflection from this premise may lead to quick profits but the significant losses in long-term horizon. Moreover, investment landscape and customers are constantly changing and distributors should be able to "catch" it.

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References

Act No. 256/2004 Coll., *on Capital Market Business*, as amended. Czech Republic. The Parliament of The Czech Republic.

Barrett, M., Cooper, D. J., & Jamal, K. (2005). Globalization and the coordinating of work in multinational audits. *Accounting, Organizations and Society*, *30*(1), 1–24. https://doi.org/10.1016/j.aos.2004.02.002

Bednarz, Z. (2022). There and back again: how target market determination obligations for financial products may incentivise consumer data profiling. *International Review of Law, Computers & Technology*, *36*(2), 138–160. https://doi.org/10.1080/13600869.2022.2060469

Buckley, R. P., Arner, D. W., Zetzsche, D. A., & Weber, R. H. (2020). The road to RegTech: the (astonishing) example of the European Union. *Journal of Banking Regulation*, *21*(1), 26–36. https://doi.org/10.1057/s41261-019-00104-1

Chiu, I. H.-Y. (2021). More paternalism in the regulation of consumer financial investments? Private sector duties and public goods analysis. *Legal Studies*, *41*(4), 657–675. https://doi.org/10.1017/lst.2021.29

Chong, C. (2023). The Design and Distribution Obligations: An Effective Tool for Consumer Protection? *Company and Securities Law Journal*, *40*(2).

Colaert, V. (2020). Product Governance: Paternalism Outsourced to Financial Institutions? *European Business Law Review*, *31*(6), 977–1000. https://doi.org/10.54648/EULR2020036

Commission delegated regulation EU 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Czech National Bank. (2017). CNB opinions on financial market regulations: *Pravidla vytváření a nabízení investičních nástrojů (product governance, „PG")* [Rules of manufacturing and distribution of investment instruments (product governance "PG")]. https://www.cnb.cz/cs/dohled-financni-trh/legislativni-zakladna/stanoviska-k-regulaci-financniho-trhu/RS2017-0015/

Decree No. 308/2017 Coll. of 11 September 2017 on the more detailed regulation of certain rules in the provision of investment services.

Denzin, N., & Lincoln, Y. (2018). *The SAGE Handbook of Qualitative Research* (5th ed.). SAGE Publications.

Directive 2014/65/EU of the European Parliament and of the council of 15 May 2014 on markets in financial instrument and amending Directive 2002/92/EC and Directive 2011/61/EU.

Dutta, G., Kumar, R., Sindhwani, R., & Singh, R. Kr. (2021). Digitalization priorities of quality control processes for SMEs: a conceptual study in perspective of Industry 4.0 adoption. *Journal of Intelligent Manufacturing*, *32*(6), 1679–1698. https://doi.org/10.1007/s10845-021-01783-2

ESMA. (2018). *ESMA 05/02/2018 | ESMA35-43-620 Guidelines on MiFID II product governance requirements*.

ESMA. (2022). *ESMA presents the results of the 2021 Common Supervisory Action (CSA) on MiFID II product governance requirements*. https://www.esma.europa.eu/file/124560/download?token=q5z0WMOm

ESMA. (2023). *ESMA reviews MiFID II Product Governance Guidelines*. https://www.esma.europa.eu/press-news/esma-news/esma-reviews-mifid-ii-product-governance-guidelines

Ewing, R. R. D. (2018). MiFID II product governance and PRIIPs in the flow transaction space Get access Arrow. *Capital Markets Law Journal*, *13*(2), 223–225. https://doi.org/10.1093/cmlj/kmy009

Grassi, L., & Lanfranchi, D. (2022). RegTech in public and private sectors: the nexus between data, technology and regulation. *Journal of Industrial and Business Economics*, *49*, 441–479. https://doi.org/10.1007/s40812-022-00226-0

Herinková, K., Kubát, M., Nejedlý, D., & Petrík, V. (2023). *Poznatky z dohledových šetření v oblasti produktového řízení (product governance) a pravidel propagace v rámci investičních služeb.* Česká národní banka. https://www.cnb.cz/export/sites/cnb/cs/verejnost/.galleries/pro_media/konference_projevy/vystoupeni_projevy/download/produktove_rizeni_propagace_20230207_akat.pdf

Hobza, M., & Vondráčková, A. (2019). Target market under MiFID II: the distributor's perspective. *Capital Markets Law Journal*, *14*(4), 518–530. https://doi.org/10.1093/cmlj/kmz018

ISO 37301:2021 Compliance management systems – Requirements with guidance for use.

Jiménez, M., Romero, L., Fernández, J., Del Mar Espinosa, M., & Domínguez, M. (2019). Extension of the Lean 5S Methodology to 6S with An Additional Layer to Ensure Occupational Safety and Health Levels. *Sustainability*, *11*(14), 3827. https://doi.org/10.3390/su11143827

Liao, K., Qin, M., He, G., Chen, S., Jiang, X., & Zhang, S. (2023). Improvement of integrity management for pressure vessels based on risk assessment - A natural gas separator case study. *Journal of Loss Prevention in the Process Industries*, *83*, 105087. https://doi.org/10.1016/j.jlp.2023.105087

Lean Enterprise Institute. (2023). *Plan, Do, Check, Act (PDCA).* https://www.lean.org/lexicon-terms/pdca/

Lindgren, B.-M., Lundman, B., & Graneheim, U. H. (2020). Abstraction and interpretation during the qualitative content analysis process. *International Journal of Nursing Studies*, *108*, 103632. https://doi.org/10.1016/j.ijnurstu.2020.103632

Loonen, T., & Pattisellano, R. (2020). The effectiveness of MiFID provisions for professional clients: a critical review. *Journal of Financial Regulation and Compliance*, *28*(1), 1–15. https://doi.org/10.1108/JFRC-07-2018-0103

Marcacci, A. (2017). European Regulatory Private Law Going Global? The Case of Product Governance. *European Business Organization Law Review*, *18*, 305–332. https://doi.org/10.1007/s40804-017-0068-0

McColl-Kennedy, J. R., Snyder, H., Elg, M., Witell, L., Helkkula, A., Hogan, S. J., & Anderson, L. (2017). The changing role of the health care customer: review, synthesis and research agenda. *Journal of Service Management*, *28*(1), 2–33. https://doi.org/10.1108/JOSM-01-2016-0018

Nguyen, V., Nguyen, N., Schumacher, B., & Tran, T. (2020). Practical Application of Plan–Do–Check–Act Cycle for Quality Improvement of Sustainable Packaging: A Case Study. *Applied Sciences*, *10*(18), 6332. https://doi.org/10.3390/app10186332

Poler, S. (2022). How stable is your customer? Individual and ipsative consistency of consumers' big five personality traits. *Contemporary Economics*, *16*(3), 297–316.

Rosie, T. (2017). Regulating Financial Product Design in Australia: An Analysis of the UK Approach. *Journal of banking and finance law and practice*, *28*(2), 95–116.

Schreier, M. (2012). *Qualitative Content Analysis in Practice*. SAGE Publications.

Seiler, V., & Fanenbruck, K. M. (2021). Acceptance of digital investment solutions: The case of robo advisory in Germany. *Research in International Business and Finance*, *58*, 101490. https://doi.org/10.1016/j.ribaf.2021.101490

Solms, J. (2021). Integrating Regulatory Technology (RegTech) into the digital transformation of a bank Treasury. *Journal of Banking Regulation*, *22*, 191–207. https://doi.org/10.1057/s41261-020-00134-0

Teichman, F., Boticiu, S., & Sergi, S. B. (2023). RegTech – Potential benefits and challenges for businesses. *Technology in Society*, *72*, 102150. https://doi.org/10.1016/j.techsoc.2022.102150

Velliscig, L. (2018). Season 3: Product Governance. Rethinking Retail Customer Protection in the EU Insurance Market. *Global Jurist*, *18*(1). https://doi.org/10.1515/gj-2017-0016

Westhausen, H. (2021). About the Calculation of the Compliance Value and its Practical Relevance. *Ekonomika*, *100*(2), 171–189. https://doi.org/10.15388/Ekon.2021.100.2.8

Yeoh, P. (2019). MiFID II key concerns. *Journal of Financial Regulation and Compliance*, *27*(1), 110–123. https://doi.org/10.1108/JFRC-04-2018-0062