

Consultation Paper

On

**A Draft Report on Good Supervisory
Practices regarding knowledge and ability
requirements for distributors of insurance
products**

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Responding to this paper

EIOPA welcomes comments on the draft Report on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products.

The consultation package includes:

- The Consultation Paper Nr. EIOPA-CP-13/016; and
- Template for comments

Please send your comments to EIOPA in the provided Template for Comments, by email CP-13-016@eiopa.europa.eu by 23 September 2013.

Contributions not provided in the provided template for comments, or sent to a different email address, or after the deadline will not be processed.

EIOPA invites comments on any aspect of this paper and, in particular, on the specific questions referred to under "*Consultation Paper Overview & Next Steps*" and reiterated in section 5 of the Report. Comments are most helpful if they:

- refer to specific paragraphs of the Report;
- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with EIOPA's rules on public access to documents¹. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by EIOPA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.eiopa.europa.eu under the heading 'Legal notice'.

¹ [Public access to documents](#)

Consultation Paper Overview & Next Steps

This Consultation Paper is being issued to seek input from stakeholders on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products. The focus of the Report is on (i) promoting supervisory convergence amongst competent authorities in the area of industry training standards and (ii) facilitating into any further policy work EIOPA might have to carry out on professional requirements in the future.

The following specific questions (which are reiterated in section 5 of the Report) are being asked for the purpose of the consultation and should be answered by using the template for comments provided by EIOPA:

1. *Does this Report address the most relevant issues? If not, what other aspects should EIOPA consider?*
2. *Is this Report helpful in informing the debate over appropriate knowledge and ability requirements for distributors of insurance products (particularly, in the light of the current negotiation of the IMD2 proposal)?*
3. *Do you consider that the high-level principles cover the right aspects of knowledge and ability?*
4. *Does the section on continuous professional development (CPD) cover the most relevant issues?*
5. *What do you think of EIOPA's suggestion, as an example of a minimum level of CPD, of 30 hours study activities within a period of 3 years (or an equivalent amount on an annual basis)?*

Next steps

EIOPA will consider the feedback received and expects to publish a final report on the consultation by no later than Q1 2014 and to submit the Report on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products, for adoption by the Board of Supervisors by no later than Q1 2014.

1. Executive Summary

List of Good Supervisory Practices

1.1 Notion of “appropriate knowledge and ability” to complete tasks and perform duties adequately

EIOPA considers it good supervisory practice for a competent authority to provide that distributors have appropriate knowledge and ability (where it is relevant to their role):

- Of the applicable legal aspects, especially as regards general principles of contract law (in particular, insurance contract law), relevant regulatory and supervisory standards, consumer protection requirements, underlying tax regime, conflicts of interests mitigation rules, personal data protection regulation.
- Of the market, the market participants (e.g. producers and distributors, professional associations, consumer representatives) and products (main characteristics of the different types of products, risks, product market environment...).
- To demonstrate ethical and professional conduct at all times (e.g. ability to consider the best interests of the customer in relevant circumstances connected with concluding and executing the contract of insurance; knowledge of how to protect the customer and all parties to a transaction against fraud, misrepresentation or unethical practices in the area of business opportunities).
- To communicate effectively to the customer regarding general and particular² terms and conditions of the contract, complaints-handling procedures, risks and rewards of a strategy or product, by using clear and comprehensible language.
- To provide suitable and/or personalised recommendations, for example, concerning the beneficiary clause, selection of appropriate insurance products depending on their main features and adapt the recommendation to the evolving consumer situation and needs.

² N.B. In some jurisdictions, the term “special” is also used.

1.2 Updating knowledge and ability through continuous professional development (CPD)

EIOPA considers it good supervisory practice for a competent authority to provide that distributors carry out CPD which:

- **Covers not only professional knowledge (e.g. insurance legislation, anti-money laundering legislation, market, products, assessment of consumer needs), but also ability (e.g. risks perception, underwriting process, claims procedures) and ethics (codes of conduct/ethics).**
- **Is maintained and updated. It is suggested that CPD should be undertaken regularly (for example, as a minimum, a cycle of 3 to 5 years). Each authority is to encourage CPD beyond minimum standards and expectations (for example: a minimum of 30 study hours within a period of 3 years).**
- **Is appropriately evidenced and that evidence is retained. The competent authority or professional body should review evidence demonstrating achievement of CPD, on a regular basis. Existing reporting mechanisms should be utilised to streamline process and prevent undue burden on distributors and competent authorities.**

EIOPA considers it good supervisory practice for a competent authority to:

- **Ensure there is appropriate oversight of CPD activity:**
 - **An external body can be used to assess whether a distributor is maintaining their knowledge and ability through CPD which fulfils relevant legal and regulatory requirements.**
 - **This body may, for example, be in the form of a supervisory authority or a professional body not representing distributors.**
 - **Some supervisory authorities permit an insurance undertaking or insurance intermediary which has full responsibility for a natural or legal person conducting insurance mediation, to conduct oversight of that**

person's CPD.

- **Appropriate tools, such as registers of attendance, could be put in place to help provide proof of CPD acquired.**
- **Apply sanctions, such as a fine or ultimately, removal from the register, if distributors fail to comply with the requirement to possess and maintain appropriate knowledge and ability.**
- **Ensure that bodies responsible for oversight, make distributors aware of the importance of keeping a high level of professional knowledge and of the necessity to update it.**

2. Introduction

2.1 Background

Existing EU requirements relating to knowledge and ability for distributors of insurance products

- 2.1.1 The Insurance Mediation Directive ("IMD1")³ introduced a pre-condition for registration that insurance and reinsurance intermediaries meet "*strict professional requirements in relation to their **competence**, good reputation, professional indemnity cover and financial capacity requirement*"⁴. In addition, Article 4(1) provided that insurance and reinsurance intermediaries must possess "**appropriate knowledge and ability**, as determined by the home Member State of the intermediary"⁵.
- 2.1.2 However, IMD1 also allows flexibility for Member States in applying these requirements at national level. Article 4(1), IMD1 allows home Member States to "*adjust the required conditions with regard to knowledge and ability in line with the activity of insurance or reinsurance mediation and the products distributed*"⁶ and Article 4(6) allows Member States to "*reinforce the requirements [regarding professional requirements in Article 4] or add other requirements for insurance and reinsurance intermediaries registered within their jurisdiction*"⁷. This minimum harmonisation approach, by its very nature, led to a divergent national implementation with respect to professional requirements for insurance and reinsurance intermediaries.

³ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation

⁴ Recital 14, IMD1: "*Insurance and reinsurance intermediaries should be registered with the competent authority of the Member State where they have their residence or their head office, provided that they meet strict professional requirements in relation to their competence, good reputation, professional indemnity cover and financial capacity*". Article 3(3), IMD1: "*Member States shall ensure that registration of insurance intermediaries - including tied ones - and reinsurance intermediaries is made subject to the fulfilment of the professional requirements laid down in Article 4*".

⁵ Article 4(1), IMD1, 1st sub-para.: "*Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary*".

⁶ Article 4(1), IMD1, 2nd sub-para.: "*Home Member States may adjust the required conditions with regard to knowledge and ability in line with the activity of insurance or reinsurance mediation and the products distributed, particularly if the principal professional activity of the intermediary is other than insurance mediation. In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for his actions*".

⁷ Article 4(6), IMD1: "*Member States may reinforce the requirements set out in this Article or add other requirements for insurance and reinsurance intermediaries registered within their jurisdiction*".

- 2.1.3 As part of the revision of IMD1 envisaged under the Solvency II Directive⁸, EIOPA's predecessor, CEIOPS, was requested to provide advice on the high level requirements on knowledge and ability of insurance intermediaries, which would be appropriate, in view of the existing differences in applicable qualification systems in Member States. CEIOPS provided advice to the European Commission on the revision of IMD1 in November 2010, which included specific recommendations with respect to professional requirements⁹ (see Annex 1). In preparing this Report, EIOPA has built on the findings in the CEIOPS Advice.

Proposed new rules from the European Commission

- 2.1.4 The Commission published on 3 July 2012 a proposal for a recast version of IMD1 ("the IMD2 proposal")¹⁰. Article 8 of the IMD2 proposal sets out professional requirements, replacing the existing Article 4, IMD1. Article 8(1), in particular, **extends the scope of the existing knowledge and ability requirements** to *"those who pursue [insurance mediation activities] on an ancillary basis, persons carrying on the activities of the professional management of claims, loss adjusting or expert appraisal of claims, and members of staff of insurance undertakings carrying out insurance mediation activities"*. It also extends the existing obligation **beyond one of just possessing appropriate knowledge and ability, to a result-oriented obligation** where that knowledge and ability must be appropriate *"to complete their tasks and perform their duties adequately, demonstrating appropriate professional experience relevant to the complexity of the products they are mediating"*. The proposal therefore **explicitly links knowledge and ability with product complexity**.
- 2.1.5 In addition, the IMD2 proposal introduces an explicit obligation for insurance and reinsurance intermediaries and members of staff of insurance undertakings carrying out insurance mediation activities to ***"update their knowledge and ability through continuing professional***

⁸ Recital 139, Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II): *"Adoption of this Directive changes the risk profile of the insurance company vis-à-vis the policy holder. The Commission should as soon as possible and in any event by the end of 2010 put forward a proposal for the revision of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, taking into account the consequences of this Directive for policyholders"*.

⁹ CEIOPS Advice to the European Commission on the revision of the Insurance Mediation Directive (2002/92/EC), Ref: CEIOPS CCP-59/10, Date: 10 November 2010..

¹⁰ Proposal for a Directive of the European Parliament and of the Council on insurance mediation (recast) Strasbourg, 3.7.2012, COM(2012) 360 final, 2012/0175 (COD)

development in order to maintain an adequate level of performance¹¹.

2.1.6 Finally, the IMD2 proposal empowers the Commission to adopt delegated acts in the following three areas:

- *"the notion of adequate knowledge and ability of the intermediary when carrying on insurance mediation with its customers as referred to in Article 8(1) [i.e. to complete tasks and perform duties adequately, demonstrating appropriate professional experience relevant to the complexity of the products they are mediating]" (Article 8(8)(a));*
- *"appropriate criteria for determining in particular the level of professional qualifications, experiences and skills required for carrying on insurance mediation" (Article 8(8)(b));*
- *"the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance" (Article 8(8)(c)).*

2.1.7 **EIOPA decided to focus on Articles 8(8)(a) and 8(8)(c) in this report, with the option to address Article 8(8)(b) later once the outcome of IMD2 negotiations has become clearer. In addition, the notion of adequate knowledge and ability to complete tasks and perform duties adequately has been considered on a general level, without making a specific link to the complexity of the product mediated.**

EIOPA's role in developing industry training standards and promoting supervisory convergence

2.1.8 EIOPA's founding Regulation¹² requires it to *"take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by.....***developing training standards for the industry***"*¹³. Developing training

¹¹ IMD2 proposal, Article 8(1), 2nd sub-para.

¹² Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)("the EIOPA Regulation")

¹³ Article 9(1)(c) of the EIOPA Regulation

standards thus falls under EIOPA's key tasks related to consumer protection.

2.1.9 In order to initiate work in this area, EIOPA published in September 2012, a Report on a mapping exercise on Industry Training Standards applied by national competent authorities¹⁴. The Report looked at different requirements as regards knowledge and ability for insurance intermediaries, set down by "national competent authorities". Its aim was to provide:

- An overview of national requirements regarding "appropriate knowledge and ability" (as currently referred to under Article 4(1), IMD1) for insurance intermediaries, including structures in place for assessing knowledge and ability;
- Experience of dealing with applications for mutual recognition of knowledge and ability; and
- Sanctions for failure to possess the appropriate knowledge and ability or to update those requirements.

2.1.10 As a follow-up to the October 2012 report, EIOPA considers, in this report, **good supervisory practices regarding knowledge and ability requirements of distributors of insurance products**.

2.2 Legal Basis and Scope

2.2.1 The legal basis for this Report is Article 29(2) of the EIOPA Regulation which provides that EIOPA "*may, as appropriate, develop new practical instruments and convergence tools to promote **common supervisory approaches and practices***".

2.2.2 Although Article 9(1)(c), EIOPA Regulation entrusts EIOPA with the task of "*taking a leading role in...developing training standards for the industry*", the initial survey it published in September 2012 (mentioned above) highlighted clearly the diversity in supervisory approaches currently in place arising out of the national implementation of the IMD.

2.2.3 It was, therefore, recognised that it **would be more appropriate for EIOPA's initial focus to be on enhancing supervisory convergence amongst**

¹⁴ Report on a mapping exercise on Industry Training Standards applied by national competent authorities, EIOPA BoS 12-092, 28 September 2012

“competent authorities”¹⁵ in the area of training requirements, before developing training standards which are directly applicable to the industry.

2.2.4 **These Good Supervisory Practices are therefore high-level principles directed at authorities competent for supervising natural or legal persons required to meet “knowledge and ability” obligations in IMD1 and any revised Directive which replaces IMD1 (namely, IMD2). As the scope of IMD2 has not been determined at this stage¹⁶, the term “distributor” is used in this Report to refer to any natural or legal person required to meet “knowledge and ability” requirements under IMD1 or, in the future, under IMD2. The approach taken in this Report is to determine high-level principles that competent authorities would apply to all distributors with the aim of allowing flexibility for Member States to adopt a proportionate approach both at the outset and on an on-going basis e.g. by adapting these principles according to the different categories of persons carrying on insurance mediation at national level (in line with Article 4(1), IMD1) and/or the nature, scale and complexity of the activity of the distributor.**

Definition of Knowledge and ability

2.2.5 “Knowledge” and “ability” are two closely related concepts and are treated as such within this report to stress their importance.

- **“Knowledge”**, in a generic sense, refers to learning carried out and the understanding, which has been acquired as result of the learning.
- **“Ability”**, in a generic sense, refers to a set of skills, which a professional possesses. It concerns the ability

¹⁵ Under Article 4(2), EIOPA Regulation, ‘Competent authorities’ are defined as: “(i) *supervisory authorities as defined in Directive 2009/138/EC [Solvency II], and **competent authorities as defined in Directive 2003/41/EC [IORP Directive and 2002/92/EC [IMD1]***; (ii) *with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by financial institutions as defined in point (1)*”.

Under Article 7, IMD1, “competent authorities” are referred to as follows: “**Member States shall designate the competent authorities empowered to ensure implementation of this Directive**”. They must be “**either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law**” They must “**possess all the powers necessary for the performance of their duties**” and “**where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively**”.

¹⁶ Including the issue of the title of IMD2 referring to “insurance mediation”, bearing in mind the extension of the Directive to direct sales.

of a professional to face certain situations: for example, how a professional is able to act in difficult and challenging situations and to behave in the decision-making process.

- 2.2.6 What is “appropriate knowledge and ability” in the context of a distributor of insurance products is described in more detail in section 3 of this Report.

2.3 Objectives

- 2.3.1 The publication of this Report is part of EIOPA’s general underlying statutory objectives of “*enhancing customer protection*”, “*preventing regulatory arbitrage and promoting equal conditions of competition*” and “*ensuring the taking of risks related to insurance, reinsurance and occupational pensions activities is appropriately regulated and supervised*”¹⁷.
- 2.3.2 The principal objectives of this Report are essentially threefold:
- *Enhancement of consumer protection* – by promoting enhanced knowledge and ability of distributors of insurance products, this Report thereby seeks **to improve the disclosure and selling of insurance products to consumers and thus reduce information asymmetry for consumers**. It is, however, explicitly recognised that other factors such as improved financial education and appropriate conduct of business regulation also play a crucial role in this respect and are also highlighted under Article 9 of EIOPA’s founding Regulation.
 - *Promotion of supervisory convergence* - enhancing convergence in the national supervisory rules regarding knowledge and ability, which are applicable to distributors of insurance products. Under IMD1, it is left to Member States to determine at national level what “knowledge and ability” means, but this Report seeks to provide guidance on what this notion might entail for competent authorities. **By listing what EIOPA considers good supervisory practice in the area of knowledge and ability requirements for**

¹⁷ Articles 1(6), (d), (e) and (f), EIOPA Regulation.

distributors of insurance products, EIOPA is thereby seeking to promote more supervisory convergence amongst competent authorities. It is recognised, however, that the good practices in this Report are non-binding and are without prejudice to applicable requirements under national law and EU law, in particular the provisions on professional requirements in IMD1.

- *Preparatory work for IMD2 - **feeding into any further work EIOPA might have to carry out on professional requirements under IMD2**, it being recognised, however, that the text of the IMD2 legislative proposal is currently under negotiation in the Council of the EU and the European Parliament and, therefore, is subject to change. N.B. This Report is not intended to pre-empt the discussions currently going on regarding the IMD2 proposal.*

2.3.3 The publication of this Report is also **in line with:**

- The **G20 High-Level Principles on Financial Consumer Protection**, which were adopted in October 2011. These high-level principles provide *inter alia* that "**staff [of financial services providers and authorised agents] (especially those who interact directly with customers) should be properly trained and qualified**"¹⁸; and
- The **International Association of Insurance Supervisors (IAIS) Insurance Core Principle (ICP) 18 regarding Intermediaries**, which provides that "*the supervisor requires insurance intermediaries to possess **appropriate levels of professional knowledge and experience, integrity and competence***"¹⁹.

¹⁸ G20 High-Level Principles on Financial Consumer Protection (October 2011), Principle 6, Responsible Business Conduct of Financial Services Providers and Authorised Agents. (see Annex 3 for full text).

¹⁹ IAIS' Insurance Core Principles, Standards, Guidance and Assessment Methodology (see Annex 3 for full text).

2.4 Structure of the Report

- 2.4.1 As one of the objectives outlined above is to feed into the work envisaged on some of the delegated acts under IMD2 regarding professional requirements, the Report is structured accordingly, focusing on the delegated acts in Articles 8(8) (a) and (c), IMD2 proposal. In line with this approach, section 3 covers “notion of appropriate knowledge and ability to complete tasks and perform duties adequately”, while section 4 relates to “updating of knowledge and ability through continuous professional development (CPD)”.
- 2.4.2 A list of what EIOPA considers to be good supervisory practices is provided in the Executive Summary and at the end of each section. The Report is concluded with an indication of the next steps envisaged in this area.

3. Notion of “appropriate knowledge and ability” to complete tasks and perform duties adequately

3.1 Introduction

3.1.1 This section of the Report looks at the notion of “appropriate knowledge and ability” and what a competent authority would expect a distributor of insurance products to demonstrate in order to complete tasks and perform duties adequately. A definition of “knowledge and ability” is first provided, followed by a series of high-level principles competent authorities would apply to distributors. Each high-level principle is described and supplemented with a non-exhaustive list of examples²⁰. Finally, a series of good supervisory practices are provided.

3.2 What is “Appropriate Knowledge and Ability”?

3.2.1 Sufficient knowledge of the technical aspects of an insurance product is not enough to sell the product in the best interests of the consumer. The manner in which knowledge is applied is equally important.

3.2.2 It is also worth noting that training often focuses in an unbalanced manner on ability or knowledge. Only a combination of both knowledge and ability enables a distributor to really understand and comprehend the demands and needs of a customer. The high-level principles below therefore take into account both knowledge and ability, although the examples might focus more to one or the other concept.

- **“Knowledge”**, in the context of a distributor refers to theoretical knowledge in the widest sense, meaning: market/professional experience (including knowledge of the specificities of the insurance market as part of the overall financial system; the characteristics of insurance products both in a generic sense and in detail as regards the specific products distributed), knowledge of national insurance regulation including consumer protection rules, legal and tax aspects of insurance contracts and ethical principles. Particularly relevant are the provisions on consumer protection in IMD1 and other consumer protection legislation, especially the

²⁰ This is in line with section 2.2.4, which provides that there would be flexibility for Member States to adopt a proportionate approach in applying the high-level principles in this Report both at the outset and on an on-going basis.

rules on conduct, transparency, conflicts of interests, pre-contractual and contractual information and advice.

- **"Ability"**, in the context of a distributor (particularly one who is a natural person or a senior member of staff of a distributor which is a legal person), consists of skills and competence with respect to the capacity to manage a business (technical/operating skills). However, it also refers to ethical behaviour/professional conduct, e.g. ability to consider the best interests of the customer in relevant circumstances connected with concluding and executing the contract of insurance. It also includes communication skills – for example, dealing with customers both pre- and post-sale.

3.3 High-level principles and examples

3.3.1 Competent authorities should provide that a person who is in the process of becoming, or already operating as, a distributor, has appropriate knowledge and the ability in the following fields and fulfil requirements in these fields on a permanent basis:

- **Legal aspects**
- **The insurance sector: market, market participants and products**
- **Ethics and professional conduct²¹**
- **Information disclosure and advice, where relevant**

Legal aspects

3.3.2 **As a general principle**, competent authorities should provide that distributors have appropriate knowledge and ability of the relevant legal aspects. Legal aspects include regulatory and supervisory rules based on EU Insurance Directives and any other relevant EU Directives, primary and secondary national legislation, binding and non-binding recommendations, guidelines or similar acts regarding the following indicative areas:

Examples of what a competent authority could require a distributor to demonstrate:

²¹ This includes how to interact with consumers.

- Knowledge of the general principles of contract law (in particular, insurance contract law) and how to execute a contract in good faith;
- A good understanding of contractual guarantees and limitation of guarantees/exclusions, claims procedures, payment delays, withdrawal rights, potential impact of payment default, termination procedures, changes to personal situation, surrender or transfer delays, etc.
- Knowledge of relevant regulatory and supervisory standards; for example, anti-money laundering requirements, distance marketing requirements, responsible supervisory authority's mission and powers, disciplinary and enforcement procedures and sanctions, if applicable.
 - Awareness of the supervisory approach/objectives of national competent authorities.
- Awareness and ability to comply with consumer protection requirements regarding disclosure and selling of insurance products which apply throughout the duration of the contract to both product providers and distributors (e.g. where relevant, subscription, portfolio management, claims-handling, complaints-handling etc.) More specifically, how to deliver specific information with regards to the contract. This might include information on the tax regime.
- Ability to manage conflicts of interest that might arise in usual business activities, which might harm the interests of its customers. In such cases, a distributor is able to identify situations in which conflicts of interest arise and is able to mitigate and communicate it. For instance, an insurance intermediary is able to inform his customer whether he has an interest in a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking²².
- Knowledge of personal data protection rules and handling of personal information of customers in a discrete manner.

The insurance sector: market, market participants and products

3.3.4 **As a general principle**, a competent authority should provide that distributors have appropriate knowledge of products and market participants and be able to act on this (ability) regarding the following indicative aspects:

²² As referred to in Article 12(1)(c), IMD1.

- **Market participants:**

Examples of what a competent authority could require a distributor to demonstrate:

- Knowledge of the role and the respective duties of other parties when conducting insurance mediation activities.
- Knowledge of professional associations and their codes of conduct/ethics, if relevant.
- Knowledge of consumer representatives and their missions and objectives.

- **Products:** characteristics and risks.

Examples of what a competent authority could require a distributor to demonstrate:

- Actual and in-depth knowledge of the main characteristics of the different types of insurance products and, where applicable, their underlying financial instruments.
- Ability to understand and identify the risks and rewards of a particular strategy or product and is able to communicate it.
- Appropriate knowledge of the tax regime applicable to the different products.
- Ability to place the product effectively in the market and differentiate it from the other products.

Ethics and professional conduct²³

3.3.5 **As a general principle**, competent authorities should provide that a distributor learns how to act professionally and ethically and how to take the interests of the consumer into account at all times regarding the following indicative aspects:

- **Ethics:**

Examples of what a competent authority could require a distributor to demonstrate:

²³ This includes how to interact with consumers.

- Knowledge of how to protect the customer and all parties to a transaction against fraud, misrepresentation or unethical practices in the area of business opportunities.
- Ability to analyse problems relating to his/her own integrity and is able to communicate these effectively (e.g. warning signs of fraud and the prevention thereof or the mis-handling of personal data of customers).
- Ability to consider the best interests of the customer in relevant circumstances connected with concluding and executing the contract of insurance.
- Ability to identify, manage and control facts and behaviours through which he might incur any professional, third party liability or management responsibility, and other forms of legal risk (e.g. anti-money laundering).
- Ability to behave at all times in a responsible manner²⁴ (e.g. fair, non-aggressive and non-misleading behaviour).
- Where relevant, awareness of compliance with a code of conduct/ethics he has endorsed as a member of an industry association or which has been imposed on him by a competent authority.

Information Disclosure and Advice

3.3.6 **As a general principle**, competent authorities should provide that distributors have appropriate knowledge and ability to provide suitable and/or personalised recommendations where relevant.

Examples of what a competent authority could require a distributor to demonstrate:

- Knowledge and ability to communicate effectively regarding general and particular²⁵ terms and conditions of the contract (including contractual guarantees and limitation of guarantees/exclusions, claims procedures, payment delays, withdrawal rights, potential impact of payment default, termination procedures, personal

²⁴ Principle 6 of the G20 High-Level Principles on Financial Consumer Protection (October 2011) provide *inter alia* that "financial services providers and authorised agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer protection".

²⁵ N.B. In some jurisdictions, the term "special" is also used.

situation modifications, surrender or transfer delays, etc.).

- Knowledge and ability to use clear and comprehensible language, avoiding jargon and technical terms where necessary.
- Knowledge about complaints-handling procedures and the ability to handle and manage complaints and provide information on redress to the consumer (i.e. procedures, including contacts, policies).
- Knowledge and ability to answer simple and complicated questions from actual or potential customers.
- Knowledge and ability to apply/ask the appropriate questions to the customer so as to better understand and identify his/her profile, needs and demands, financial capacity and his/her long-term objectives, in due time.
- Knowledge and ability to explain the risks and rewards of a particular strategy or product to the customer.
- Ability to retain appropriate customer records²⁶.
- Ability to provide adequate guidance to consumers regarding the beneficiary clause.
- Ability to communicate effectively addressing their tone, manner and style whether orally or in writing to the intended audience.
- Ability to compare selected insurance products, conditions, premiums and risks and is able to select the best insurance products and conditions suited to the client profile.
- Ability to update advice, when necessary and to comply with new legislation or relevant changes in the personal situation of the customer.
- Ability to exercise appropriate judgement in deciding whether to sell a product to a customer.

EIOPA considers it good supervisory practice for a competent authority to provide that distributors have appropriate knowledge and ability (where it is relevant to their role):

- **Of the applicable legal aspects, especially as regards general principles of contract law (in particular, insurance contract law), relevant regulatory and supervisory standards, consumer**

²⁶ Fulfilling record-keeping, data protection requirements.

protection requirements, underlying tax regime, conflicts of interests mitigation rules, personal data protection regulation.

- **Of the market, the market participants (e.g. producers and distributors, professional associations, consumer representatives) and products (main characteristics of the different types of products, risks, product market environment...).**
- **To demonstrate ethical and professional conduct at all times (e.g. ability to consider the best interests of the customer in relevant circumstances connected with concluding and executing the contract of insurance; knowledge of how to protect the customer and all parties to a transaction against fraud, misrepresentation or unethical practices in the area of business opportunities).**
- **To communicate effectively to the customer regarding general and particular²⁷ terms and conditions of the contract, complaints-handling procedures, risks and rewards of a strategy or product, by using clear and comprehensible language.**
- **To provide suitable and/or personalised recommendations, for example, concerning the beneficiary clause, selection of appropriate insurance products depending on their main features and adapt the recommendation to the evolving consumer situation and needs.**

²⁷ N.B. In some jurisdictions, the term “special” is also used.

4. Updating knowledge and ability through continuous professional development (CPD)

4.1. Introduction

- 4.1.1 This section of the Report looks at updating of knowledge and ability through continuous professional development (CPD) and what a competent authority would expect a distributor of insurance products to demonstrate in order to maintain an “adequate level of performance”. The notion of “continuous professional development” is first considered; then what “adequate level of performance” might entail and finally, the importance of promoting CPD.

Background

- 4.1.2 EIOPA’s Report on Industry Training Standards applied by national competent authorities²⁸ demonstrates the lack of regulation on continuous professional development (CPD) in some Member States. It is clear from the Report that CPD is not a widely recognised/applied model.
- 4.1.3 The requirement for CPD varies considerably across Member States. In some Member States, there is no formal requirement for CPD or the introduction of a system regarding CPD is only currently envisaged. In other jurisdictions, there is a formal requirement for CPD, but the quantity, content and duration of CPD vary between Member States. The requirement for CPD for brokers, agents, tied agents, sub-agents and employees of an insurance undertaking also varies. Furthermore, there is limited availability for intermediaries to carry out updating courses through e-learning.
- 4.1.4 It is important to note that professional experience does not necessarily guarantee continuous adherence to correct principles or improvement in the quality of conduct. Holding the requisite certificates does not automatically mean that intermediaries will retain the required level of competence over a period of several years. Evidence from practitioners shows that CPD makes it possible for them not only to keep their knowledge of the rules up-to-date, but also enhance their career prospects. A high level of professional

²⁸ Report on a mapping exercise on Industry Training Standards applied by national competent authorities, EIOPA BoS 12-092, 28 September 2012. See also section 2.1.9 above

knowledge of intermediaries and staff of insurance undertakings advising on, or selling insurance products or assisting with claims, is also essential to protect the interests of the consumers.

4.2. Notion of “continuous professional development”

Legal bases

- 4.2.1 Pursuant to Article 4(5), IMD1, the pursuit of the activities of insurance and reinsurance mediation should require the professional requirements in IMD1 to be fulfilled on a permanent basis.²⁹
- 4.2.2 Pursuant to Article 8(1) sub-paragraph 2, IMD2 proposal, *“Member States shall ensure that insurance and reinsurance intermediaries and members of staff insurance undertakings carrying on insurance mediation activities update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance”*.

Definition

- 4.2.3 CPD is a series of study activities that competent authorities would reasonably expect distributors to carry out to ensure that they keep their knowledge and ability updated in order to conduct their mediation activities with professionalism and with the aim to protect the interests of their customers.

- What?
 - Knowledge³⁰:
 - CPD should cover, for example, changes to legislation, regulatory changes, new insurance products and services available on the market, new market and consumer tendencies.

²⁹ Directive 2002/92/EC on insurance mediation.

³⁰ As regards the notion of “knowledge”, also refer to section 3 of this Report

- Ability³¹:
 - CPD should cover, for example, the process of analysing the demands and needs of customers and offer the best product or service for them. CPD also aims at day-to-day conduct and at helping the practitioner to apply technical competence to real situations which includes risk perception, underwriting process and management, the advising rules, the claims procedures.

Knowledge and ability also includes ethics and professional conduct (see section 3 of this Report). With regards to ethics and professional conduct, CPD should include adherence to ethical conduct principles. Considering the risk of possible conflict of interests, judgement should be exercised by competent authorities about the validity of CPD courses that aim to market specific products.

- How?
 - CPD can, for example, be based upon points attained by enrolling on relevant courses and conferences, or by regularly attending any (renewed) course (or a module of it) or training which was necessary for the "appropriate knowledge and ability";
 - It can be proven by an examination with recognised schools or professional bodies, or simply by proving the attendance;
 - The possibility to carry out updating courses through e-learning should be developed; for example, the possibility to receive training via video link; and
 - Activities carried out should be readily identified as CPD. This could include training offered by employers, or an appropriate professional training/educational body, to maintain a sufficiently high level of knowledge and ability.

³¹ As regards the notion of "ability", also refer to section 3 of this Report

4.3. Notion of “adequate level of performance”

Duration & frequency

- 4.3.1 CPD is effective when undertaken on a periodical basis, regardless if this is through a formal requirement or not. Where competent authorities provide for CPD, current minimum periodical requirements vary, ranging from 30 hours per annum to approximately every five years³². How often CPD should be undertaken will depend on the complexity, difficulty and frequency of new developments in the industry, for example, new regulatory requirements or products³³. EIOPA considers, for example, a minimum of 30 hours study activities within a period of 3 years (or an equivalent amount on an annual basis) as good practice.

Proof of continuous professional development (CPD)

- 4.3.2 Competent authorities should consider how distributors can best demonstrate achievement of CPD. Evidence may be:
- **Formal**, for example, a certificate of completion or assessment, a certificate of attendance at a conference or at a course on insurance given by an organizer licensed for that purpose by the competent authority or professional body; or
 - **Informal**, for example, demonstration of practical experience or exercises with a coach, which could be licensed for that purpose by the competent authority or professional body.
- 4.3.3 An example of formal proof of CPD would be the following: after completion of CPD activity, the distributor receives study points: for example, 1 hour study activity equals 1 study point. The distributor can then demonstrate achievement of CPD when he collects at least a minimum number of study points within every period of 3 to 5 years.
- 4.3.4 In order to receive study points or demonstrate hours attended, the distributor should gather evidence such as a certificate from the organizer of the conference, of the courses or of the exercises. This organizer could be licensed by the authority or by the professional bodies. The

³² See Report on a mapping exercise on Industry Training Standards applied by national competent authorities, EIOPA BoS 12-092, 28 September 2012

³³ This is in line with section 2.2.4, which allows for a proportionate approach when applying the high-level principles in this Report, based on the nature, scale and complexity of the activity of the distributor.

competent authority should consider what appropriate records the distributor should retain to demonstrate achievement of CPD.

- 4.3.5 Pursuant to Article 3(3), IMD1³⁴, the validity of the registration of insurance intermediaries is subject to a regular review by the competent authority. During this review, the competent authority may ask the insurance intermediary to produce certificates ascertaining the number of study points collected by the insurance intermediary within the period concerned. This information may be recorded in the register of intermediaries held by the competent authority, but on a proportionate basis which takes into account the importance of limiting any disproportionate administrative burden on insurance undertakings, insurance intermediaries and competent authorities.

Oversight

- 4.3.6 A system or process to check that CPD carried out by individuals meets (and continues to meet) the knowledge and ability requirements, ensures a consistent approach within a jurisdiction. Current oversight mechanisms vary across jurisdictions with responsibility falling to the supervisory authority, a professional body not representing distributors, or, in some cases, an insurance undertaking or an insurance intermediary (where it is fully responsible for a natural or legal person conducting insurance mediation). There is, however, usually some form of external assessment of the distributor's CPD activity³⁵. It would be important that impartiality remained as a theme across all jurisdictions. However, it is necessary to ensure that controls are not overly burdensome or prohibitive.
- 4.3.7 Competent authorities should provide that distributors have an appropriate process in place to ensure their individuals are able to keep their knowledge up to date. This may form part of an existing training plan if one is in place.

³⁴ Article 3(3), IMD1 provides: "Member States shall ensure that registration of insurance intermediaries - including tied ones - and reinsurance intermediaries is made subject to the fulfilment of the professional requirements laid down in Article 4. Member States shall also ensure that insurance intermediaries - including tied ones - and reinsurance intermediaries who cease to fulfil these requirements are removed from the register. **The validity of the registration shall be subject to a regular review by the competent authority.** If necessary, the home Member State shall inform the host Member State of such removal, by any appropriate means".

³⁵ See page 10 of EIOPA Report on a mapping exercise on Industry Training Standards applied by national competent authorities, 28th September 2012

- 4.3.8 Competent authorities should consider how CPD can be achieved and monitored without placing undue administrative burden on themselves or distributors. This could include how CPD may be monitored (e.g. through on-site inspections) or reported, what is monitored or reported and also the frequency within which CPD is required.
- 4.3.9 The organizers of conferences or courses (e.g. on insurance) or exercises licensed by the authority or by professional bodies could hold a register of attendance, mentioning, for example, the number of study points collected by each distributor and the date of the conference, course or exercise.
- 4.3.10 The information about the number of study points obtained by distributors can be collected by professional bodies for their members. The competent authority can supervise this information.
- 4.3.11 The proposed CPD structure must remain proportionate to the requested aim and avoid excessive administrative burden on distributors and competent authorities.

Sanctions

- 4.3.12 Failure to update or improve knowledge and ability on an on-going basis can lead to consumer detriment. Most jurisdictions have sanctions in place for distributors, ranging from applying time limits to comply, to more serious sanctions including fines, removal of registration and imprisonment. The staff of insurance undertakings may also be subject to separate provisions regarding sanctions under the Solvency II regime or under national legal frameworks.
- 4.3.13 As a minimum, competent authorities may consider applying a time limit to comply where distributors have failed to keep their knowledge and ability up to date and ensure that there is an appropriate sanction in place for failure to adhere to the time-limit, such as removal from the register, censure/reprimand or a monetary penalty.

4.4 Promotion of CPD

- 4.4.1. Competent authorities need to make distributors and their staff aware of the importance of keeping a high level of professional knowledge and of the necessity to update it.

EIOPA considers it good supervisory practice for a competent authority to provide that distributors carry out CPD which:

- **Covers not only professional knowledge (e.g. insurance legislation, anti-money laundering legislation, market, products, assessment of consumer needs), but also ability (e.g. risks perception, underwriting process, claims procedures) and ethics (codes of conduct/ethics).**
- **Is maintained and updated. It is suggested that CPD should be undertaken regularly (for example, as a minimum, a cycle of 3 to 5 years). Each authority is to encourage CPD beyond minimum standards and expectations (for example: a minimum of 30 study hours within a period of 3 years).**
- **Is appropriately evidenced and that evidence is retained. The competent authority or professional body should review evidence demonstrating achievement of CPD, on a regular basis. Existing reporting mechanisms should be utilised to streamline process and prevent undue burden on distributors and competent authorities.**

EIOPA considers it good supervisory practice for a competent authority to:

- **Ensure there is appropriate oversight of CPD activity:**
 - **An external body can be used to assess whether a distributor is maintaining their knowledge and ability through CPD which fulfils relevant legal and regulatory requirements.**
 - **This body may, for example, be in the form of a supervisory authority or a professional body not representing distributors.**
 - **Some supervisory authorities permit an insurance undertaking or insurance intermediary which has full responsibility for a natural or legal person conducting insurance mediation, to conduct oversight of that person's CPD.**
 - **Appropriate tools, such as registers of attendance, could be put in place to help provide proof of CPD acquired.**
- **Apply sanctions, such as a fine or ultimately, removal from the register, if distributors fail to comply with the requirement to possess and maintain appropriate knowledge and ability.**

- **Ensure that bodies responsible for oversight, make distributors aware of the importance of keeping a high level of professional knowledge and of the necessity to update it.**

5. Next Steps

Once adopted by EIOPA's Board of Supervisors, this Report will be subject to a 12-week public consultation (see targeted questions below). In the light of the comments received during that consultation process, the text of the Report may need to be re-drafted and re-submitted to EIOPA's Board of Supervisors for approval. It will then be submitted to the European Commission and could serve as a basis for future own-initiative work by EIOPA on developing training standards for the Industry and any follow-up work under IMD2.

Questions for the Public Consultation

- 1. Does this Report address the most relevant issues? If not, what other aspects should EIOPA consider?**
- 2. Is this Report helpful in informing the debate over appropriate knowledge and ability requirements for distributors of insurance products (particularly, in the light of the current negotiation of the IMD2 proposal)?**
- 3. Do you consider that the high-level principles cover the right aspects of knowledge and ability?**
- 4. Does the section on continuous professional development (CPD) cover the most relevant issues?**
- 5. What do you think of EIOPA's suggestion, as an example of a minimum level of CPD, of 30 hours study activities within a period of 3 years (or an equivalent amount on an annual basis)?**

Annexes

Annex 1 – Extract from CEIOPS Advice on the revision of the IMD – Recommendations on High level requirements of knowledge and ability

4.2 High level requirements of knowledge and ability

1. Members discussed if IMD2 should prescribe the professional requirements by the different types or kinds of intermediaries. One possible way to differentiate the level of knowledge and ability requirements was not according to whether this was the main activity of the intermediary or the kind of intermediation activity pursued, but whether or not there is direct contact with the insurance undertaking. By making a distinction in this way (as already implemented by some Member States) between agents and brokers on one hand, and on the other those intermediaries who have a contractual relationship with agents and brokers and acting under their responsibility. In this regard, the aim of consumer protection could be fully fulfilled, considering that the lower level of professionalism requirements would be stated only for the intermediaries acting on behalf of and under the responsibility of an agent or broker.
1. However, this approach is not universal across Member States and it will be necessary to consider quite carefully how greater harmonisation could be achieved via this route. With regards to this, some Member States underlined a possible significant disadvantage of the approach based on the relationship with insurance undertakings as intermediaries who are usually in direct contact with the customer and for this reason, they should possess a higher knowledge and ability in order to provide advice. As such, the knowledge and ability requirements could be differentiated according to whether or not they have direct contact with the customer, instead of contact with the insurance undertaking.
2. From all the considerations above, different possible criteria emerged to differentiate the knowledge and ability requirements according to the category of intermediary. Therefore, it would be difficult to provide a differentiation of professional requirements according to the type of intermediary in IMD2.
3. In addition, in application of Article 4(5), IMD, the knowledge and ability of intermediaries are monitored, not only at registration, but also on an on-going basis, imposing sanctions in cases of infringements. For example, one Member requires that intermediaries must regularly update their professional knowledge through the annual attendance of updating courses lasting a minimum of 30

hours.

4. From the conclusion of the [CEIOPS Report](#), it emerged that all Member States implemented at least the minimum standards provided for in the IMD and in some cases stricter regulations have been adopted, in accordance with the minimum harmonisation provisions in the IMD.
5. So, the following areas could be taken into account in determining the high-level professional requirements:
 - A clear desire by Member States for intermediaries to act ethically i.e. the standard of professional behaviour that is expected;
 - IMD2 to move away from defining roles and focus on definitions of activities to account for national differences;
 - Intermediaries to maintain the appropriate standard of skills, knowledge and ability on an on-going basis;
 - Member States' ability to retain responsibility for setting the appropriate professionalism standards in their own jurisdiction based on the high level principles provided by IMD2.
6. From the above, it is clear that there is a desire to engender a minimum level of professional standards. However, the current legislation has a mix of what defines competence e.g. the measures that define effective performance to a certain standard, such as possessing the appropriate knowledge and ability with how good reputation should be demonstrated e.g. the behaviours or ethical standards that should be displayed, such as having a clean police record and not being declared bankrupt. It should be noted that some of these requirements are already enshrined in national laws. It was noted that Members prefer to retain responsibility for specifying details of professional standards at national level.
7. During the discussion, different alternatives were analysed in order to identify the high-level requirements of knowledge and ability as requested by the European Commission.
8. In particular, many Members are not in favour of the potential accreditation of private organisations (both at the domestic and at EU level) recognised by supervisors as responsible for training and competence requirements, among other things, given the risk of conflict of interest between private business and the sake of a public objective.
9. It has been suggested instead to find high-level principles that could include ethics (which would encompass both competence and consumer protection), rather than prescribing specific content, in order to avoid the necessity to update it on a regular basis and also the risk of creating barriers to entry.

10. However, there may be a need to go further than a high-level principle with regards to verifying knowledge and ability, in some specific areas, but note that the obligation to carry out this activity should be carefully considered as any duty on the Competent Authority to carry out this function may prove unduly burdensome. It could also be useful for IMD2 to specify the following further illustrative principles, such as:
- (a) **Necessary verification of the competence of intermediaries** (for example, requiring a qualifying examination for intermediaries who have direct contact with insurance undertakings, who are agents and brokers, and the attendance of training courses for intermediaries acting on behalf of, and under the responsibility of agents and brokers, such as subagents and collaborators of agents and brokers, with the possibility of differentiating depending on the category of intermediaries. Some Members proposed, as another option, imposing stricter requirements on the latter group of collaborators rather than the intermediaries in contact with insurance undertakings while they are in direct contact with customers and are the main risk factors for causing losses to customers. A Member suggested that for tied agents, as defined in Article 2(7), IMD, the insurance undertaking should be responsible for the training); and
 - (b) **Updating professional knowledge** through attendance at updating courses, in order that professional requirements are fulfilled on a permanent basis, as stated by Article 4(5), IMD. (As regards to this, two Members underlined the administrative burden of an annual obligation. Among those, one Member proposed looking at Article 22, Directive 2005/36/EC on the recognition of professional qualifications which states that "*continuing education and training shall ensure that persons who have completed their studies are able to keep abreast of professional developments to the extent necessary to maintain safe and effective practice*". According to Directive 2005/36/EC, this requirement of continuing education and training does apply to higher education e.g. doctors, dentists, veterinary surgeons or architects. The organisation of the training is ceded to the Member States).
 - (c) **the required competence could be adequate to the activity to be pursued and to the types of insurance contracts to be mediated, aimed to obtain an up-to-date level of theoretical knowledge, technical and operating skills and skills in dealing with customers;**
 - (d) **the knowledge of legislation**, technical, fiscal and of economic matters relating to insurance, with special regard to the regulation of insurance contracts as well as the technical features and legal aspects of the insurance contracts that the intermediaries seeking registration, will distribute;
 - (e) **the provisions on consumer protection as provided by the IMD and other relevant legislation, with particular**

reference to the rules of conduct and transparency towards policyholders and insured persons, conflict of interest, pre-contractual and contractual information to provide to the customers and adequacy of contractual proposals to the demands and needs of the customer.

11. However, specifying “how” intermediaries demonstrate competence, at Directive level, may be difficult to achieve in practice for a number of reasons. For example, restricting competence to a qualifications framework may put up barriers for intermediaries who may be able to demonstrate competence through market experience.
12. On the other hand, the IMD2 could be reformulated in order to increase the level of consumer protection, by providing for a set of common provisions aimed at achieving an adequate level of competence verified by Member States, which could take into account the possible integration of the mutual recognition clause of knowledge and ability. In addition, to develop a non-exhaustive list of all the desired competencies that suits each Member State would be challenging. This approach would also not account for market innovations or changes in structure and could quickly become out of date and necessitate revisions to the directive on a regular basis. **However, this does not preclude an indicative list of competencies being included as an Annex to the Directive, for guidance purposes.**

Recommendation 11

- The majority of Members are in favour of the general aim of finding a common basic principle of knowledge and ability, irrespective of the method of distribution.
- Most Members support, as a minimum basis, a high-level principle which gives Member States the possibility to graduate the knowledge and ability requirements according to the activity pursued or type of intermediary.
- Members are unanimous in their view that employees of insurance undertakings should not be registered under IMD2. It should be the responsibility of the insurance undertaking to check the qualification and good reputation of its employees.

Possible integration of the provisions of the Luxembourg Protocol relating to the mutual recognition clause into IMD2

1. Members evaluated the possibility of integrating a mutual recognition clause into IMD2 connected with harmonising knowledge and ability requirements, taking into account the existing differences between Member States.
2. The general system of the Directive 2005/36 on the recognition of professional qualifications which the Luxembourg Protocol refers to (Title III, Chapter I), states that *"if access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the Competent Authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing the attestation of competence or evidence of formal qualifications required by another Member State in order to gain access to and pursue that profession on its territory"* (see Article 13). The Directive provides a mechanism for recognising equivalent qualifications, but it does not specify the level of competency that should be demonstrated i.e. markets and product knowledge.
4. Furthermore, Article 14(3), Directive 2005/36 provides that *"By way of derogation from the principle of the right of the applicant to choose, as laid down in paragraph 2, for professions whose pursuit requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may stipulate either an adaptation period or an aptitude test"*.
4. Members were of the opinion that a minimum level of harmonisation of knowledge and ability requirements is desirable in order to avoid unnecessary burdens on Member States to put in place systems to recognise qualifications by non-national intermediaries. But, given the variability among Member States of fiscal regimes, markets, etc, the ability to embed this at directive level may be difficult to achieve. In addition, as some Member States specify professional requirements by the different types of intermediaries, to include a non-exhaustive list of the equivalent requirements for each intermediary, which closely matches the descriptions in each Member state, would be a challenge. However, consideration should be given to whether there is merit in determining a minimum set of requirements on which to base a mutual recognition clause of knowledge and ability. Note: some Members maintain that the less harmonisation achieved, the higher the duration of previous experience required in order to ensure a level playing field.
5. One Member suggested that the mutual recognition clause should be extended to persons who are employees of intermediaries and directly involved in intermediation activities. This would allow such persons to move from one Member State to another and work as employees of intermediaries in another Member State.

Recommendation 12

- The majority of Members generally support a mutual recognition clause of intermediaries' knowledge and ability, preferably in IMD2 rather than in the Luxembourg Protocol.

Recommendation 13

- The majority of Members support the development of a mutual recognition clause of intermediaries' knowledge and ability, taking inspiration from the repealed system of the first Mediation Directive 77/92 or under the general Directive 2005/36. (Note that this is in addition to the provisions relating to FOS and FOE). This solution could, for example, recognise a previous minimum registration period that the insurance or reinsurance intermediary was registered by another Member State, on condition that the registration had not been revoked by a sanction and the licence was concurrent. Note: consideration should be given to freedom of movement under the Treaty.
 - the pursuit of the previous intermediation activity shall not have ceased for a defined period before the date when the application for the new registration is made (see Article 7, Directive 77/92);
 - the proof of the previous registration shall be established by a certificate, issued by the Competent Authority or body in the Member State of origin or Member State whence the person concerned comes, which the latter shall submit in support of his application presented to the new Member State (see Article 9, Directive 77/92).

Annex 2 – Existing EU Regulation on knowledge and ability requirements

Directive/Regulation	Article/Recital	Provision
Insurance Mediation Directive (IMD) (Directive 2002/92/EC)	Recital 8	<i>The coordination of national provisions on professional requirements and registration of persons taking up and pursuing the activity of insurance mediation can therefore contribute both to the completion of the single market for financial services and to the enhancement of customer protection in this field.</i>
	Recital 14	<i>Insurance and reinsurance intermediaries should be registered with the competent authority of the Member State where they have their residence or their head office, provided that they meet strict professional requirements in relation to their competence, good repute, professional indemnity cover and financial capacity.</i>
	Article 3	<p><i>Article 3(3): Member States shall ensure that registration of insurance intermediaries – including tied ones – and reinsurance intermediaries is made subject to the fulfilment of the professional requirements laid down in Article 4.</i></p> <p><i>Member States shall also ensure that insurance intermediaries— including tied ones – and reinsurance intermediaries who cease to fulfil these requirements are removed from the register. The validity of the registration shall be subject to a regular review by the competent authority. If necessary, the home Member State shall inform the host Member State of such removal, by any appropriate means.</i></p>
	Article 4	<p><i>Article 4(1): Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary.</i></p> <p><i>Home Member States may adjust the required conditions with regard to knowledge and ability in line with the activity of insurance or reinsurance mediation and the products distributed, particularly if the principal professional activity of the intermediary is other than insurance mediation. In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for his actions.</i></p>

Directive/Regulation	Article/Recital	Provision
		<p><i>Member States may provide that for the cases referred to in the second subparagraph of Article 3(1), the insurance undertaking shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in the first subparagraph of this paragraph and, if need be, shall provide such intermediaries with training which corresponds to the requirements concerning the products sold by the intermediaries.</i></p> <p><i>Art. 4(2): Insurance and reinsurance intermediaries shall be of good repute. As a minimum, they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they should not have been previously declared bankrupt, unless they have been rehabilitated in accordance with national law.</i></p> <p><i>Art. 4(5): Pursuit of the activities of insurance and reinsurance mediation shall require that the professional requirements set out in this Article be fulfilled on permanent basis.</i></p> <p><i>Art. 4(6): Member States may reinforce the requirements set out in this Article or add other requirements for insurance and reinsurance intermediaries registered within their jurisdiction.</i></p> <p><i>Art. 8(3): Member States shall provide for appropriate sanctions in the event of an insurance or reinsurance intermediary's failure to comply with national provisions adopted pursuant to this Directive.</i></p>
<p>Solvency II (Directive 2009/138/EC)</p>	<p>Recitals 34-35</p>	<p><i>(34) All persons that perform key functions should be fit and proper. However, only the key function holders should be subject to notification requirements to the supervisory authority.</i></p> <p><i>(35) For the purpose of assessing the required level of competence, professional qualifications and experience of those who effectively run the undertaking or have other key functions should be taken into consideration as additional factors.</i></p>
	<p>Article 42</p>	<p>Article 42 - Fit and proper requirements for persons who effectively run the undertaking or have other key functions</p> <p><i>1. Insurance and reinsurance undertakings shall ensure that all persons who effectively run the</i></p>

Directive/Regulation	Article/Recital	Provision
		<p><i>undertaking or have other key functions at all times fulfil the following requirements:</i></p> <p><i>(a) their professional qualifications, knowledge and experience are adequate to enable sound and prudent management (fit); and</i></p> <p><i>(b) they are of good repute and integrity (proper).</i></p>
Professional Qualifications Directive (Directive 2005/36)	Recital 15	<i>In the absence of harmonisation of the minimum training conditions for access to the professions governed by the general system, it should be possible for the host Member State to impose a compensation measure. This measure should be proportionate and, in particular, take account of the applicant's professional experience. Experience shows that requiring the migrant to choose between an aptitude test or an adaptation period offers adequate safeguards as regards the latter's level of qualification, so that any derogation from that choice should in each case be justified by an imperative requirement in the general interest.</i>
	Article 13	<p>Article 13 - Conditions for recognition</p> <p><i>1. If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing the attestation of competence or evidence of formal qualifications required by another Member State in order to gain access to and pursue that profession on its territory.</i></p>
	Article 14(3)	<p>Article 14 - Compensation measures</p> <p><i>3. By way of derogation from the principle of the right of the applicant to choose, as laid down in paragraph 2, for professions whose pursuit requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may stipulate either an adaptation period or an aptitude test.</i></p>

Directive/Regulation	Article/Recital	Provision
Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts	Articles 6 – 13 and 30	<p>Article 6(Educational qualifications)</p> <p><i>Without prejudice to Article 11, a natural person may be approved to carry out a statutory audit only after having attained university entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level, organised or recognised by the Member State concerned.</i></p> <p>Article 7 (Examination of professional competence)</p> <p><i>The examination of professional competence referred to in Article 6 shall guarantee the necessary level of theoretical knowledge of subjects relevant to statutory audit and the ability to apply such knowledge in practice. Part at least of that examination shall be written.</i></p> <p>Article 13 (Continuing education)</p> <p><i>Member States shall ensure that statutory auditors are required to take part in appropriate programmes of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level, and that failure to respect the continuing education requirements is subject to appropriate penalties as referred to in Article 30.</i></p> <p>Article 30 (Systems of investigations and penalties)</p> <p><i>1. Member States shall ensure that there are effective systems of investigations and penalties to detect, correct and prevent inadequate execution of the statutory audit.</i></p> <p><i>2. Without prejudice to Member States' civil liability regimes, Member States shall provide for effective, proportionate and dissuasive penalties in respect of statutory auditors and audit firms, where statutory audits are not carried out in conformity with the provisions adopted in the implementation of this Directive.</i></p> <p><i>3. Member States shall provide that measures taken and penalties imposed on statutory auditors and audit firms are appropriately disclosed to the public. Penalties shall include the</i></p>

Directive/Regulation	Article/Recital	Provision
		<i>possibility of the withdrawal of approval.</i>

Forthcoming EU legislation

Directive/Regulation	Article/Recital	Provision
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on insurance mediation (recast)	Recitals 22-25	<p><i>(22) It is important to guarantee a high level of professionalism and competence among insurance and reinsurance intermediaries and the employees of direct insurers who are involved in activities preparatory to, during and after the sales of insurance policies. Therefore, the professional knowledge of an intermediary, of the employees of direct insurers, and of car rental companies and travel agents, as well as the professional knowledge of persons carrying on the activities of the management of claims, loss adjusting or expert appraisal of claims needs to match the level of complexity of these activities. Continuing education should be ensured.</i></p> <p><i>(23) The coordination of national provisions on professional requirements and registration of persons taking up and pursuing the activity of insurance or reinsurance mediation can therefore contribute both to the completion of the single market for financial services and to the enhancement of customer protection in this field.</i></p> <p><i>(24) In order to enhance cross border trade, principles regulating mutual recognition of intermediaries' knowledge and abilities should be introduced.</i></p> <p><i>(25) A national qualification accredited to level 3 or above under the European Qualification Framework established under the Recommendation of the European Parliament and Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning¹⁶ should be accepted by a host member state as demonstrating that an insurance or reinsurance intermediary meets the requirements of knowledge and ability which are a condition of registration in accordance with this Directive. This framework helps Member States, education institutions, employers and individuals compare qualifications across the Union's</i></p>

		<p><i>diverse education and training systems. This tool is essential for developing a employment market throughout the Union. This framework is not designed to replace national qualifications systems but to supplement the actions of the Member States by facilitating cooperation between them.</i></p>
	<p>Article 8 (Professional and organisational requirements - Extract)</p>	<p><i>1. Insurance and reinsurance intermediaries, including those who pursue these activities on an ancillary basis, persons carrying on the activities of the professional management of claims, loss adjusting or expert appraisal of claims, and members of staff of insurance undertakings carrying out insurance mediation activities, shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary or undertaking, to complete their tasks and perform their duties adequately, demonstrating appropriate professional experience relevant to the complexity of the products they are mediating.</i></p> <p><i>Member States shall ensure that insurance and reinsurance intermediaries and members of staff of insurance undertakings carrying out insurance mediation activities update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance.</i></p> <p><i>Member States may adjust the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance mediation and the products mediated, particularly if the principal professional activity of the intermediary is other than insurance mediation. In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for the intermediary's actions.</i></p> <p><i>Member States may provide that in the cases referred to in the second subparagraph of Article 3(1), the insurance undertaking or intermediary shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in the first subparagraph of this paragraph and, if need be, shall provide such intermediaries with training which corresponds to the requirements concerning the products sold by the intermediaries.</i></p> <p><i>Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons working in an insurance undertaking or insurance or reinsurance intermediary who pursue the activity of insurance or</i></p>

		<p><i>reinsurance mediation. Member States shall ensure that a reasonable proportion of the persons within the management structure of such undertakings who are responsible for mediation in respect of insurance and reinsurance products and all other persons directly involved in insurance or reinsurance mediation demonstrate the knowledge and ability necessary for the performance of their duties.</i></p> <p><i>8. The Commission shall be empowered to adopt delegated acts in accordance with Article 33. Those delegated acts shall specify</i></p> <p><i>(a) the notion of adequate knowledge and ability of the intermediary when carrying on insurance mediation with its customers as referred to in paragraph 1 of this Article;</i></p> <p><i>(b) appropriate criteria for determining in particular the level of professional qualifications, experiences and skills required for carrying on insurance mediation;</i></p> <p><i>(c) the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance.</i></p>
<p>Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on credit agreements relating to residential property</p>	<p>Articles 6, 20 and 21</p>	<p>Article 6 - Minimum competence requirements</p> <p><i>1. Home Member States shall ensure that:</i></p> <p><i>(a) The staff of creditors and credit intermediaries possess an appropriate level of knowledge and competence in relation to the offering or granting of credit agreements within the meaning of Article 2, or the activity of credit intermediation as defined in Article 3(e). Where the conclusion of a credit agreement includes an ancillary service related to it, in particular insurance or investment services, they shall also possess appropriate knowledge and competence in relation to that ancillary service in order to satisfy the requirements set out in Article 19 of Directive 2004/39/EC and Article 4 of Directive 2002/92/EC.</i></p> <p><i>(b) The natural persons within the management of creditors and credit intermediaries who are responsible for or have a role in the intermediation, advice or approval of the credit agreement, possess appropriate knowledge and competence in relation to credit</i></p>

		<p>agreements.</p> <p><i>(c) Creditors and credit intermediaries are monitored in order to assess whether the requirements referred to in paragraph 1, points (a) and (b), are complied with on a continuing basis.</i></p> <p><i>2. Home Member States shall ensure that the appropriate level of knowledge and competence is determined on the basis of recognised qualifications or experience.</i></p> <p><i>3. Home Member States shall make public the criteria they have established in order for credit intermediaries or creditors' staff to meet their competence requirements. Such criteria shall include a list of any recognised qualifications.</i></p> <p><i>4. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to specify the requirements provided in paragraph 1 and 2 of this Article, and in particular, the necessary requirements for appropriate knowledge and competence.</i></p> <p>Article 20 - Registration of credit intermediaries</p> <p><i>1. Member States shall ensure that a register of authorised credit intermediaries is established and kept up to date.</i></p> <p><i>2. Member States shall ensure that all authorised credit intermediaries, whether established as natural or legal persons, are registered with a competent authority as referred to in Article 4, in their home Member State</i></p> <p>Article 21 - Professional requirements applicable to credit intermediaries</p> <p><i>1. In addition to the requirements set out in Article 6, the following provisions shall apply to all credit intermediaries on a continuing basis:</i></p> <p><i>(a) Credit intermediaries shall be of good repute. As a minimum, they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been</i></p>
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		<i>rehabilitated in accordance with national law.</i>
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Annex 3 - Relevant international provisions on knowledge and ability

Type of provision	Article/Recital/ Principle	Provision
G20 High-Level Principles on Financial Consumer Protection (October 2011)	Principle 6	<p>6. Responsible Business Conduct of Financial Services Providers and Authorised Agents</p> <p><i>Financial services providers and authorised agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer protection. Financial services providers should also be responsible and accountable for the actions of their authorised agents.</i></p> <p><i>Depending on the nature of the transaction and based on information primarily provided by customers financial services providers should assess the related financial capabilities, situation and needs of their customers before agreeing to provide them with a product, advice or service. Staff (especially those who interact directly with customers) should be properly trained and qualified. Where the potential for conflicts of interest arise, financial services providers and authorised agents should endeavour to avoid such conflicts. When such conflicts cannot be avoided, financial services providers and authorised agents should ensure proper disclosure, have in place internal mechanisms to manage such conflicts, or decline to provide the product, advice or service.</i></p> <p><i>The remuneration structure for staff of both financial services providers and authorised agents should be designed to encourage responsible business</i></p>

		<p>conduct, fair treatment of consumers and to avoid conflicts of interest. The remuneration structure should be disclosed to customers where appropriate, such as when potential conflicts of interest cannot be managed or avoided.</p>
<p>IAIS' Insurance Core Principles, Standards, Guidance and Assessment Methodology</p>	<p>ICP 18 (Intermediaries)</p>	<p>18.3 - The supervisor requires insurance intermediaries to possess appropriate levels of professional knowledge and experience, integrity and competence.</p> <p>Professional Knowledge & Experience</p> <p>18.3.1 - It is important that individuals working as insurance intermediaries have adequate professional knowledge to carry out their responsibilities. Professional knowledge can be gained from experience, education and training. Importantly, to be able to demonstrate that a certain level of professional knowledge has been achieved, it is preferable that this is supported by the attainment of relevant professional qualifications.</p> <p>18.3.2 - Professional qualifications underpin the quality of work carried out by professionals, including insurance intermediaries. The supervisor thus has an interest in ensuring that insurance intermediaries have policies and procedures which encourage individuals to achieve relevant professional qualifications.</p> <p>18.3.3 - The supervisor may also wish to ensure that individuals responsible for Insurance intermediation activities have professional qualifications and experience appropriate for the business which they intermediate. More complex products or Customer needs will require higher or more specialised qualification and experience. The qualifications and experience of individuals should also be appropriate for the type of intermediation being carried out, whether as agent for a specific insurer or acting as a broker primarily on</p>

		<p><i>behalf of the Customer. Once professional qualifications have been achieved, it is important that individuals who continue to work as insurance intermediaries keep their professional knowledge up to date. Certain professional bodies require their members to spend a specified minimum amount of time on continuous professional development.</i></p> <p><i>18.3.4 - The supervisor may consider recognising the qualifications of specified professional bodies. Where a jurisdiction has no such professional body, consideration could be given to encouraging or recognising qualifications obtained through professional bodies in other jurisdictions. The supervisor might also consider recognising international qualifications where these are considered to be equivalent to, or exceed, a jurisdiction's qualifications.</i></p> <p><i>18.3.5 - Intermediaries should also be knowledgeable regarding the status of the insurers whose products they sell. For example, they should be aware of the jurisdiction(s) in which the insurer is licensed, whether they are placing business with a branch or subsidiary company, the financial status and credit rating of the insurer and the applicability of any policyholder protection schemes to that insurer's products.</i></p>
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