

Comments Template on EIOPA-CP 13/016 Consultation Paper on a Draft Report on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products		Deadline 23 September 2013 12:00 CET EIOPA-IRSG-13-12
Company name:	Insurance and Reinsurance Stakeholder Group (IRSG)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.	Public
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering in column "Reference", or any other formatting in the file.</u> ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>. Please do not delete rows in the table. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. <ul style="list-style-type: none"> ○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies. ○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment relating to the corresponding paragraph. <p>Please send the completed template to CP-13-016@eiopa.europa.eu, in MS Word Format, (our IT tool does not allow processing of any other formats).</p> <p>For your convenience, the complete list of questions is outlined below:</p> <ol style="list-style-type: none"> 1. <i>Does this Report address the most relevant issues? If not, what other aspects should EIOPA consider?</i> 2. <i>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)?</i> 		

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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)?*

Reference	Comment
General Comment	<p>The public consultation on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products has been promoted in accordance with a fairly complex regulatory framework.</p> <p>The G20 High-Level Principles on Financial Consumer Protection and the International Association of Insurance Supervisors (IAIS) Insurance Core Principle (ICP) 18 regarding Intermediaries require appropriate levels of professional knowledge and experience, integrity and competence prescribing that staff [of financial services providers and authorised agents] (especially those who interact directly with customers) should be properly trained and qualified..</p> <p>IMD1 complies with the above-mentioned principles because it sets forth that insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, <i>as determined by the home Member State of the intermediary.</i></p> <p>The level of harmonization, which is achieved with such a rule, consists of requiring all Member States to introduce these requirements, but each State remains free to determine their content. Accordingly, the national supervisory authorities should demand compliance with requirements that may vary between Member States and on which the authorities could have no power to determine their content.</p>

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	<p>Therefore the IRSG believes that, in the framework of the IMD1, Good Practices addressed to national supervisors on knowledge and ability may not achieve the aim of a convergence in the practices of the national supervisory authorities because the rules which they must enforce, are different at national level.</p> <p>The IRSG, however, acknowledges that IMD2 proposal sets forth additional provisions on the “appropriate knowledge and ability”. In particular, IMD2 extends scope and content of the existing requirements, introduces an explicit obligation to update knowledge and ability through continuing professional development, and empowers the Commission to adopt delegated acts in three areas.</p> <p>Therefore the IRSG supports a study on the topics included in the areas that have been delegated to the Commission, as a preparatory work for IMD2, but the IRSG emphasizes the following criticalities.</p> <p>The IRSG is cautious in assuming that references to IMD2 by EIOPA to be effective, given the current state of the preparatory works on this project. The IRSG also highlights the potential conflict between the outcome of promoting supervisory convergence in the area of industry training before IMD2 has been finalized and the power to set knowledge and ability standards that the European Commission can receive under IMD2. Finally, the IRSG believes that the proposal to apply the professional requirements also to the staff of insurance undertakings would meet the need for a proportionate, risk-based approach avoiding creating an unnecessary administrative burden. Insurance undertakings and their staff meet these requirements in a variety of different ways, such as under Solvency II and national labor law. Insurance undertakings are responsible for training their employees and they design their own training programs. This is consistent with CEIOPS’ advice to the European Commission recommending that it should be the responsibility of the insurance undertaking to check the qualification of its employees.</p>	
Q1.		

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<p>Q2.</p>	<p>EC proposal on IMD2 empowers Commission to adopt, <i>inter alia</i>, a delegated act to define the notion of knowledge and ability that is now extended to “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” and linked to “the complexity of the products they are mediating”.</p> <p>EC proposal on IMD2 demands the Commission to define the requirements of knowledge and ability <i>with reference to the complexity of the products</i>. IMD2 does not allow Member States and national supervisory authorities to adapt these requirements to the complexity of the products that each distributor can mediate. While the nature, scale and complexity of the activity carried out by the distributor is a profile other than the complexity of the products that distributor is mediating.</p> <p>Therefore, the IRSG invites EIOPA to consider if the current stage of the EC proposal on IMD2 allows the introduction of Good Supervisory Practices that link the notion of adequate knowledge and ability to complete tasks and perform duties adequately to the complexity of the product mediated.</p>	
<p>Q3.</p>	<p>In general terms, the IRSG agrees with the aspects of knowledge and ability as described in the draft report. However, the IRSG supports amendments to adapt the knowledge and ability to the complexity of the products as well as to the relationship established between distributor and customer.</p> <p>This is the case, e.g., of the principle under which distributors are requested to adapt the recommendation to <i>the evolving consumer situation and needs</i>. In addition, distributors are requested to have the ability to consider the <i>best interests</i> of the customer in relevant circumstances connected with concluding and executing the contract of insurance; despite that IMD1 refers to the <i>adequacy</i> of the product to meet the needs of the customer, and a reference to IMD2 is premature at this stage of the preparatory works on that proposal.</p>	

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	<p>The IRSG also highlights that the regime governing knowledge requirements of those involved in selling insurance products should be proportionate to their role and to the risks associated with the products they sell. This would allow adapting requirements to whether mediation is the principal activity or ancillary. The IRSG believes that imposing inappropriate and non-proportionate requirements will add unnecessary costs and burden to the distributors channels, and this may result to the detriment of consumers who will have reduced choice of providers.</p> <p>Finally, the IRSG supports a greater clarity with reference to the <i>“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”</i> because words like <i>“transaction”</i> and <i>“business opportunities”</i> are likely to be interpreted in a controversial way.</p>	
<p>Q4.</p>	<p>The IRSG notes that draft report makes several references to <i>“entities”</i>, such as recognized schools, professional bodies, organizers licensed, as providers of courses or training to comply with the principle of continuous professional development. Nothing is said, however, regarding the requirements of these entities.</p> <p>The IRSG acknowledges, inter alia, the risk of conflict of interest between private business and the sake of a public objective that can result from the potential accreditation of private organisations (both at the domestic and at EU level) recognised by supervisors as responsible for training and competence requirements.</p> <p>However, the IRSG senses a need for clarity on the requirements that national supervisory authorities should consider in assessing the quality of people, in terms of insurance experience and background, which can be properly instructors at these entities and, accordingly, the same quality of the courses/training provided by the entities.</p> <p>Therefore he IRSG invites EIOPA to consider the introduction of good practices on professional background, which</p>	

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	<p>may be required by the national supervisory authorities to the instructors who are able to provide a continuous professional development to distributors.</p>	
Q5.	<p>The draft report acknowledges that Member States adopted very different rules in this regard..</p> <p>The IRSG, however, notes that EIOPA’s suggestion could not be regarded as being included within the EC proposal on IMD2 that empowers Commission to adopt a delegated act on <i>“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>Moreover, this suggestion could not be “covered” by the EIOPA’s founding Regulation, which requires EIOPA to develop training standards for the industry, because the draft report has been addressed to national supervisory authorities.</p> <p>In any case, the IRSG supports professional requirements that are outcome-oriented rather than defining input requirements such as a given amount of training. Concrete learning outcomes and competences should be preferred to imposing a minimum number of training-hours, which is likely to result in additional burden and costs, without bringing any added value. The IRSG therefore believes that the specification of minimum professional requirements should be determined at national level.</p>	