

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
Company name:	BIPAR, the European Federation of Insurance Intermediaries	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. <i>Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.</i>	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</i> 		

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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)?*

Reference	Comment	
General Comment	<p>BIPAR welcomes the opportunity provided by EIOPA to comment on the consultation paper on a Draft Report on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products.</p> <p>In general, BIPAR supports the various principles from IMD I regarding knowledge and ability and promotes also an appropriate system of continuous professional development for insurance distributors.</p> <p>BIPAR believes that every consumer who is in contact with someone who carries on an intermediation (or insurance distribution) activity should have the right and certainty that he or she is in contact with someone who has the knowledge and ability necessary for the performance of his or her duties. This is one of the reasons why BIPAR in the framework of IMD II is in favour of a wide and activity-based scope with only very limited exceptions.</p> <p>The training systems in the various European Member States are still very different. We do not believe these differences are problematic.</p> <p>The differences in the systems are mainly due to the variety in national education and training</p>	

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	<p>infrastructures and systems or due to the involvement of other Ministries, social partners, industry, in the organisation of training.</p> <p>In the framework of EIOPA's current exercise, one has to look at this broader picture and at the cost that changes or specifications would imply. A one-size-fits-all approach does not seem to be appropriate nor necessary nor acceptable in this area of regulation. Good practices in one market are certainly not per definition good practices in other markets.</p> <p>Appropriate knowledge and ability for all those who are in contact with the consumer for the purpose of intermediating could be evaluated by demonstrating the competences necessary for the performance of their duties and where relevant for the intermediaries activities. This can at national level be expressed under the form of learning inputs and learning outputs related to the activity of the intermediary and in a variety of ways to be determined by the Member States.</p> <p>In terms of training requirements, it should be considered that persons who are working for example in the marine division of an intermediary do not need knowledge on, for example, car insurance. The intermediary should have flexibility. Without this, the European insurance sector would lose critical know-how.</p> <p>Training has also a competitive aspect. Indeed, the know-how of the persons working in one insurance intermediation business distinguishes the business from another intermediation / distribution business.</p> <p>Defining detailed training requirements could lead to administrative burden - in particular in a business-to-business environment. Intermediaries should continue to have the possibility to train people on the work floor to become specialists.</p> <p>The current requirements in the IMD have over the years resulted in quality training systems adapted to the specificities of the market, in the various national Member States and are still being developed and improved.</p>	

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Systems should also ensure that continuity is guaranteed.

The topic of knowledge and ability is very specific and requires special national competence and knowledge, **both from the side of the competent authorities and from the side of the training providers.**

It may be possible that in some Member States, supervisory authorities do not have the required powers (or know-how) to develop training requirements and supervise the systems. Some of the aspects may depend on, or may interfere with legislation in the area of national education and/or social legislation.

Following to the above, we believe that the consultation paper goes already very far in making suggestions, not only for good supervisory practices but already in detail for requirements for distributors.

Although we understand that EIOPA with this draft Report wants to anticipate future legislation and although such a pro-active approach may be considered as an act of good governance and of forward-thinking, we are concerned about the timing of this consultation and about the relevance of its outcome. Indeed, the starting point of this consultation is a mix of existing IMD I rules and potential future IMD II wording.

Our main concern is that the drafted practices are not considered by stakeholders in the context of the final legislative framework and its implementation at national level. It is impossible to judge the possible impact of the draft practices in this report in the context of an unknown future regulatory framework. We are therefore unable to give many comments to the proposed contents at this moment.

Finally, we wonder if there will be another consultation once the IMD II is adopted. What will be the status of this report once the IMD II is adopted?

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	To summarise, we support an adequate level of knowledge and ability, as well as continuous professional development, but do not believe this should be regulated at European level in much detail.	
Q1.	<p>One of the aspects that may be considered is to broaden the scope of the draft Report to distributors of insurances that (may continue and) fall outside the scope of IMD (I or II). Should it not be a very general rule that high level training and knowledge requirements are applicable to all distributors of insurances, irrespective if they fall under the scope of the IMD or not?</p> <p>Every consumer who is in contact with someone who carries on an intermediation or distribution activity should have the right and certainty that he or she is in contact with someone who has the knowledge and ability necessary for the performance of his or her duties. This is one of the reasons why BIPAR in the IMD II discussions, is in favour of a wide and activity- based scope with only very limited exceptions.</p> <p>BIPAR also suggests to start thinking about requirements to which the staff of the competent authorities in charge of the supervision or implementation of training and knowledge requirements need to comply. With regard to the exam system, if any, it has to be noted that Member States should retain full discretion but that it would be appropriate for the board of examiners, in relation to technical subjects, to be composed of specialists in the field.</p>	
Q2.	<p>See our responses above.</p> <p>We wonder if there will be another consultation once the IMD II is adopted? What will be the status of this report once the IMD II is adopted?</p>	
Q3.	<p>See comments above.</p> <p>Based upon Article 4 of the IMD, there are specific training and qualification requirements in place in the various Member States which reflect these high level principles in the IMD I. These systems are</p>	

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adapted to the national general qualification systems (and education infrastructure) which are still very different in the Member States and therefore a high level approach, as in the current IMD , is indeed preferable.

We believe however that the high level principles and the examples in particular go into too great a level of detail. For instance with regard to the requirement to have good understanding of contractual guarantees, it should be noted that terms and conditions will always be situation-specific. Another example that we believe is rather detailed and subjective is the ability to address one's tone, manner and style to the intended audience (3.3.6., p 21) .

Furthermore, we have concerns about point 3.3.5 which refers to the "best interest" of the consumer and point 3.3.6. on information disclosure and advice, which seems to imply the need to "update advice, when necessary and to comply with new legislation or relevant changes in the personal situation of the consumer". This is repeated on p. 22 amongst the examples of good supervisory practice (last bullet point: "...and adapt the recommendation to the evolving consumer situation and needs").

The intermediary however depends on the information given to him by the client and this should be made clearer, not to imply that the intermediary has to act as a private detective in order to update his advice in case of relevant changes in the personal situation of the consumer.

The current requirements in the IMD have over the years resulted in quality training systems adapted to the specificities of the market, in the various national Member States.

Systems should also ensure that continuity is guaranteed. People with many years of experience in a specialist branch of insurance for example (see marine example above and below), should not be confronted with a formal system which could possibly push them out of the profession.

Defining detailed training requirements could lead to administrative burden - in particular in a business to business to business environment. Intermediaries should continue to have the possibility to train people on the work floor to become specialists.

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Those Member States who wish, or need, to further develop their training system could consider, together with the national representatives of the industry, the following as a possible high level indicative source of inspiration for national systems. This should then be adapted to the national market circumstances, to be considered in function of the activities of the intermediary and to be considered in function of the competences necessary for the performance of their duties:

1. Indicative list of examples of skills and competences to have if necessary for the performance of their duties and when relevant for the intermediation activities and if in contact with the public:

Being able to :

- Inform the customer about the intermediary's situation and explain the types of services which are offered
- Make a demands and needs analysis on the basis of information collected from the customer
- Introduce, propose or carry out other work preparatory to the conclusion of contracts of insurance, or conclude such contracts, or assist in the administration and performance of such contracts, in particular in the event of a claim.

2. Indicative list of examples of knowledge

The person can, where relevant for his/ her duties and activities, and if in contact with the consumer, have knowledge about the following aspects:

- Duties of the Intermediary
- The nature of risk and uncertainty

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	<ul style="list-style-type: none"> • The place of insurance in the economy • Functions of insurance • The structure of the insurance market and the principal types of organizations • Sums and values insured • Principles of Insurance Contract Law • General Principles of EU/national Insurance Law • Knowledge of the technical knowhow of / related to the main classes of insurance if relevant for the activity of the intermediary and if relevant for the performance of its duties <p>With regard to the exam system, if any, it has to be noted that here also Member States should retain full discretion but that it would be appropriate for the board of examiners, in relation to technical subjects, to be composed of specialists in the field.</p>	
Q4.	<p>See above.</p> <p>BIPAR promotes the application of appropriate systems of continuous professional development but as stated above believes that for the practical implementation and detail, flexibility and freedom</p>	

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	<p>should be left to the Member States.</p> <p>With regard to the proof of continuous professional development (point 4.3.2) where evidence can be given on a formal (e.g. through a certificate) or informal (e.g. demonstration of exercises with a coach) basis, we would like to better understand how such proof can be given in an informal way.</p> <p>With reference to the following statements on oversight, we explicitly wish to point out that there is no reason to believe that oversight organised by professional bodies that represent distributors/intermediaries would not function well:</p> <ul style="list-style-type: none"> ○ point 4.3.6. <i>“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 activity . It would be important that impartiality remained as a theme across all jurisdictions ».</i> ○ the summary on p 29 : <i>«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.</i> 	
Q5.	<p>BIPAR promotes the application of appropriate systems of continuous professional development. However, we believe that sufficient flexibility should be given to the Member States and in function of the situation and therefore we do not encourage a European standard (especially not when we are between IMD I and IMD II). As with the general training system, a specialist in marine insurance should not be obliged to know everything about motor insurance. On the other hand, everybody who is in contact with the public about any kind of insurance (in or out of IMD scope) should in one way or another be obliged to be trained for the duties he or she performs. Member States, in consultation</p>	

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	<p>and cooperation with industry bodies, need the freedom to arrange the practical implementation according to their national specificities, taking into consideration existing systems.</p>	