

IMPROVING QUALIFICATIONS FOR FINANCIAL ADVISORS IN EU: POLICY PROPOSALS

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ABSTRACT

The aim of the present study is to assess the regulatory framework and make some policy proposals to regulators for the improvement of qualifications for financial advisors in the European Union, serving as an input for the development of the main objectives of the Retail Investment Strategy: to strengthen confidence in financial advisors and to increase market participation of retail investors. The present study includes in the scope the assessment of MiFID II and IDD national transposition rules on this topic. Finally, we address the basis for the feasible adoption of a pan-European label for advisors and we propose some guidelines for its implementation.

Keywords: MiFID II, IDD, ESMA, EIOPA, knowledge, competence, qualification, training, pan-European label, investment advice, information, financial instruments, financial services.

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LIST OF ABBREVIATIONS

AFM	Autoriteit Financiële Markten (Dutch Authority for the Financial Markets)
AMF	Autorité des Marchés Financiers (France)
APER	FCA's Statements of Principle and Code of Practice for Approved Persons
CAA	Commissariat aux Assurances (Luxembourg)
CEDEFOP	European Centre for the Development of Vocational Training
CMVM	Comissão do Mercado de Valores Mobiliários (Portugal)
CNB	Czech National Bank
CNMV	Comisión Nacional del Mercado de Valores (Spain)
COCON	FCA's Code of Conduct
CONSOB	Commissione Nazionale per le Società e la Borsa (Italy)
CPD	Continuing Professional Development
CSSF	Commission de Surveillance du Secteur Financier (Luxembourg)
DSI	Stichting Dutch Securities Institute (Dutch Securities Institute Foundation)
EBTN	European Banking and Financial Services Training Network
ECTS	European Credit Transfer and Accumulation System
ECVET	European Credit System for Vocational Education and Training
EEA	European Economic Area
EFA	European Financial Advisor (EFPA)
EIP	European Investment Practitioner (EFPA)
EFPA	European Financial Planning Association AISBL
EQAVET	European Quality Assurance Reference Framework for Vocational Education and Training

EQF	European Qualifications Framework for lifelong learning
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority (United Kingdom)
FMA	Financial Market Supervision (Austria)
FSA	Finantsinspektsioon (Estonia)
IVASS	Istituto per la Vigilanza sulle Assicurazioni (Italy)
IDD	Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MNB	Magyar Nemzeti Bank (Central Bank of Hungary)
NCA	National Competent Authority
SYSC	FCA's Senior Management Arrangements, Systems and Controls sourcebook (United Kingdom)
TC	FCA's Training and Competence sourcebook (United Kingdom)

EXECUTIVE SUMMARY

In the framework of the Retail Investment Strategy, the aim of the present study is to assess the regulatory framework and give some policy proposals for the improvement of qualifications for financial advisors in the European Union.

Based on Article 25.9 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II), the European Securities and Markets Authority (ESMA) was required to adopt guidelines specifying criteria for the assessment of knowledge and competence stated in Article 25.1 of the Directive.

According to this mandate, in December 2015, ESMA issued its Guidelines 2015/1886 for the assessment of knowledge and competence (the ‘ESMA Guidelines’). All EU Member States have informed ESMA their intention to comply with them.

In 2018, the European Financial Planning Association AISBL (EFPA) promoted a report in which we analysed the implementation in EU Member States of ESMA Guidelines for the assessment of knowledge and competence (the ‘EFPA 2018 Report’) and recommended to take steps towards a more harmonized application of knowledge and competence requirements for financial advisors across the European Union.

On the other hand, the Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (IDD) establishes knowledge and competence requirements for advisors in Article 10 and Annex I. Therefore, while for securities distribution knowledge and competence requirements for advisors are stated in Level 3 of regulation, for insurance-based investment products (IBIPs) distribution those requirements are stated in Level 1 of regulation.

In the context of Action 8 of the Capital Market Union Action Plan, in June 2022, the European Commission issued the Staff Working Document “Report on the current framework for qualification of financial advisors in the EU and assessment of possible ways forward” (the ‘EC Report’). The EC Report reviews the existing regulatory requirements for financial advisors and explores possible ways forward along with the potential demand for a pan-EU label.

The present study updates the EFPA 2018 Report and extends its scope to analyse possible divergences in Member States transposition rules of Article 10 and Annex I of IDD. Its aim is to define policy, to assess the regulatory framework, and to make proposals to regulators, serving as an input for the development of the main objectives of the Retail Investment Strategy: to strengthen confidence in financial advisors and to increase market participation of retail investors.

After summarising the background and explaining the research methodology, the present study proposes some foundation clarifications regarding the key concepts in professional standards

of knowledge, competence, and qualifications. The study then assesses the differences arisen among EU Member States relevant rules in the implementation of ESMA Guidelines and compares the state of play with the differences arisen among EU Member States transposing IDD requirements, considering the data on which the EC Report is based. We finally reach some conclusions and make some proposals:

- There is a lack of harmonization in MiFID II knowledge and competence requirements among the Member States and, to a lesser extent, also in IDD knowledge and competence requirements.
- The lack of harmonization in knowledge and competence requirements for local advisors under Article 3 of MiFID II could create confusion for its lack of clarity, making difficult to choose a financial advisor compliant with MiFID II. Local advisors should be required to comply with the same knowledge and competence requirements.
- It is strongly advisable to have a taxonomy of qualification requirements. MiFID II-IDD knowledge and competence requirements should be based on a clear and common definition of key concepts such as ‘knowledge’, ‘competence’, ‘qualification’, ‘training’, or ‘learning outcomes’.
- It is crucial to clarify that the fulfilment of knowledge and competence requirements means acquiring an appropriate qualification, and not only participating in a training programme.
- It is highly advisable that EQF is used in defining the level of a required appropriate qualification.
- It is essential to specify that an appropriate qualification involves observance of professional ethics standards.
- It is strongly advisable to require validated CPD for a qualification to be considered appropriate.
- In relation to the minimum period required to gain appropriate experience and the maximum period under which a staff member lacking appropriate qualification or appropriate experience can work under supervision, the more consistent the requirements are within the EU, the better.
- The adoption of a pan-European label would favour financial advisors’ autonomy and mobility and would enhance market confidence and investor protection by reducing the advice gap.
- The design of a pan-European label should be based on the following appropriate standards or common principles extracted from MiFID II and IDD: (1) business ethics

standards as an integral part of professional standards; (2) an enhanced level of qualifications required for staff providing advice versus staff giving information, using the levels stipulated by the EQF as a benchmark; (3) structured training which content is defined in learning outcomes with a transparent validation process and which lead to a qualification; (4) certified qualifications; and (5) validated CPD which supports the continuous updating of each certificate.

- The granting of the pan-European label would entail a two-step check: (i) to comply with knowledge and competence requirements stated in MiFID II and IDD, according to one of the various implementing options that the regulation provides; and (ii) to comply with these 5 principles.

BACKGROUND

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (hereinafter, 'MiFID II') was to be transposed by 3 July 2017, and the dispositions adopted had to be applied from 3 January 2018.

In its Article 25.1, MiFID II establishes that «Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and this Article. Member States shall publish the criteria to be used for assessing such knowledge and competence.».

Besides, Article 3.1 of MiFID II establishes that Member States may choose not to apply MiFID II to some persons for which they are the home Member State providing specific investment services, among which are investment advice (hereinafter, 'local advisors'), providing that they fulfil some conditions (e.g., the services provided cannot be passported). According to Article 3.2 of MiFID II, Member States that exercise this regulatory option shall submit these persons to requirements which are at least analogous to certain requirements on conditions and procedures for authorisation and on-going supervision, conduct of business obligations and organisational requirements. However, Article 25.1 of MiFID II is not included among the requirements listed under that provision. Therefore, knowledge and competence requirements for local advisors are left to discretion of Member States. This could create confusion for its lack of clarity, making difficult to choose a financial advisor compliant with MiFID II.

Being the aim of the Directive to provide greater protection for investors and market transparency through harmonized national regulatory provisions, the European Securities and Markets Authority (hereinafter, 'ESMA') was empowered under Article 25.9 MiFID II to adopt guidelines specifying criteria for the assessment of knowledge and competence required by the Directive.

ESMA Guidelines for the assessment of knowledge and competence¹, issued in December 2015 and reviewed in January 2017 (hereinafter, 'ESMA Guidelines'), establish minimum standards for the assessment of knowledge and competence for staff who provides investment advice or gives information about financial instruments, structured deposits, investment services or ancillary services to clients ('relevant services', § 4.d of ESMA Guidelines).

¹ See ESMA Guidelines for the assessment of knowledge and competence, ESMA/2015/1886. Available at: <https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence> (last consulted 28 April 2023).

ESMA Guidelines consider various options for their implementation: through the publication by the National Competent Authority (hereinafter, ‘NCA’) or other national body identified in the Member State of the criteria of the Guidelines as well as the characteristics that an appropriate qualification needs to meet to comply with those criteria; or through the publication of a list of the specific appropriate qualifications that are considered to meet the criteria of the Guidelines; or through the publication of both the criteria and a list. Moreover, ESMA Guidelines establish minimum standards, so the NCAs may require greater levels of knowledge and competence for staff providing advice or giving information.

According to ESMA’s information on compliance, all the EU Member States had informed ESMA their intention to comply with the Guidelines for the assessment of knowledge and competence². However, Belgium and Denmark are considered non-compliant as they continue to intend to comply after the application date of the ESMA Guidelines. On the other hand, available information on MiFID II transposition shows that all the EU Member States have adopted transposition rules³.

The wide margin of discretion that ESMA Guidelines leave to the Member States to define the qualification requirements for advisors have led to significant divergences between Member States. This disparity of criteria damages the confidence of clients in the cross-border provision of advisory services and creates inequalities for advisors depending on their location. This fact was confirmed in 2018, in a report promoted by the European Financial Planning Association AISBL (EFPA) in which we analysed the implementation in EU Member States of ESMA Guidelines (hereinafter, the ‘EFPA 2018 Report’)⁴. To tackle this problem, the EFPA 2018 Report submitted to ESMA recommended to take steps towards a more harmonized application of knowledge and competence requirements for financial advisors across the European Union. Among its conclusions and recommendations, it suggested that ESMA carry out a broader and a more-in-depth study on the implementation of its Guidelines within the framework of Article 90 of MiFID II, which provides that before 3 March 2019 the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on the impact of certain MiFID II provisions on the proper functioning of the internal market on cross-border investment advice.

² See:

https://www.esma.europa.eu/sites/default/files/library/compliance_table_with_guidelines_on_knowledge_and_competence_2020.pdf (last consulted 14 April 2023).

³ See official information regarding national transposition measures of MiFID II communicated by the Member States, available at: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32014L0065> (last consulted 14 April 2023).

⁴ See ZUNZUNEGUI, F. / CORBAL, P.: «Assessment of Implementation in EU Member States of MiFID II Requirements on Knowledge and Competence», July 2018. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3384628

On the other hand, Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (hereinafter, ‘IDD’) was to be transposed by 1 July 2018, and the dispositions adopted had to be applied by 1 October 2018. Unlike MiFID II, IDD establishes knowledge and competence requirements through Article 10 and Annex I, without providing for the European Insurance and Occupational Pensions Authority (hereinafter, ‘EIOPA’) to issue guidelines on those requirements.

According to this regulation, while the requirements under MiFID II have been established by ESMA through guidelines, so Member States had to regulate knowledge and competence requirements through rules implementing ESMA Guidelines; among the scope of IDD, Member States had to issue transposition rules⁵.

Besides, IDD is a minimum harmonization directive, so Member States may impose stricter requirements.

This way of regulation may have favoured that national transposition rules show multiple divergences on the regulation of knowledge and competence requirements of IDD.

In turn, it is worth noting the divergences in the regulation of knowledge and competence requirements between these two areas of the financial market. Even if both MiFID II and IDD set out as a general requirement that staff providing information or advice should have the necessary knowledge and competence, ESMA Guidelines give more attention to the acquisition of a qualification, while IDD focuses more on the maintaining of the qualification through continuous professional development.

Besides, ESMA Guidelines define the knowledge and competence requirement as a qualification which should be updated, whereas IDD stipulates a training programme with a CPD requirement. Moreover, the appropriate qualification is defined by ESMA as «a qualification or other test or training course». This is a material difference which opens large scale differences in implementing the requirements, especially in cases –as we will address in this study– where NCAs have simply reproduced the ESMA Guidelines as their own.

On 24 September 2020, the European Commission adopted the Capital Market Union (hereinafter, ‘CMU’) Action Plan⁶, in which framework the Commission committed to issue a

⁵ Therefore, knowledge and competence requirements among the scope of MiFID II are regulated in Level 3 of Lamfalussy; while those requirements among the scope of IDD are regulated in Level 1 of Lamfalussy. For more information on the Lamfalussy architecture, see: https://finance.ec.europa.eu/regulation-and-supervision/regulatory-process-financial-services_en (last consulted 14 April 2023).

⁶ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: «A Capital Markets Union for people and businesses-new action plan», Brussels, 24.9.2020, COM(2020) 590 final. See https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan/action-8-building-retail-investors-trust-capital-markets_en (last consulted 14 April 2023).

Retail Investment Strategy (hereinafter, ‘RIS’)⁷. According to the CMU Action Plan, the RIS «will seek to ensure that retail investors can take full advantage of capital markets and that rules are coherent across legal instruments. An individual investor should benefit from: (i) adequate protection, (ii) bias-free advice and fair treatment, (iii) open markets with a variety of competitive and cost-efficient financial services and products, and (iv) transparent, comparable and understandable product information. EU legislation should be forward-looking and should reflect ongoing developments in digitalisation and sustainability, as well as the increasing need for retirement savings.».

Under Action 8 of the CMU Action Plan, the Commission committed to assess the possible ways for improving the level of professional qualifications for advisors in the EU by amending the relevant rules on qualifications in MiFID II and IDD and by introducing a voluntary pan-EU label for financial advisors⁸. These measures would help to achieve the RIS objectives by enhancing harmonization of knowledge and competence requirements.

For the preparation of these actions, EIOPA carried out a survey addressed to NCAs on IDD requirements concerning knowledge and competence of advisors distributing IBIPs. In January 2022, EIOPA issued a Report on the application of the IDD which included relevant data on the fulfilment of knowledge and competence requirements (the ‘EIOPA Report on the application of the IDD’)⁹.

As announced under Action 8 of the CMU Action Plan, in June 2022, the European Commission issued the Staff Working Document “Report on the current framework for qualification of financial advisors in the EU and assessment of possible ways forward”¹⁰ (the ‘EC Report’); without prejudice to possible amendments to the rules on qualifications of financial advisors in MiFID II and IDD that are being assessed, under Action 8 (C) of the CMU

⁷ See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-EU-strategy-for-retail-investors_en (last consulted 17 April 2023).

⁸ Under Action 8 of the CMU, the European Commission stated: «Subject to a positive impact assessment carried out in the context of the reviews of the IDD by Q1 2023 and MiFID II by Q4 2021, the Commission will introduce a requirement for advisors to obtain a certificate that proves that their level of knowledge and qualifications is sufficient to access the profession, and shows that they take part in an adequate level of continuous education. This aims to maintain a satisfactory level of advisor performance. In addition, by Q1 2022 the Commission will assess the feasibility of setting up a pan-EU label for financial advisors, which can be used to comply with the requirement to obtain a certificate.».

⁹ See EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: Report on the application of the Insurance Distribution Directive (IDD), EIOPA-BoS-21/581, 6 January 2022; and EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: Annexes I-VIII to the Report on the application of the Insurance Distribution Directive (IDD), EIOPA-BoS-21/582, 6 January 2022.

¹⁰ Brussels, 30.6.2022, SWD(2022) 184 final. The elaboration of this report was suggested in the EFPA 2018 Report.

Action Plan, as part of ongoing work on the future Retail Investment Strategy¹¹. For the preparation of this report, the European Commission sought ESMA's and EIOPA's input.

The EC Report assesses the status of qualification requirements for financial advisors and confirms the conclusions reached in the EFPA 2018 Report. It also explores possible improvements in the quality of financial advice and examines the feasibility of creating a pan-European label for financial advisors. Although it is merely a «staff working document», and not a policy pathway assessment binding on the EC, its findings are of great importance.

Finally, in the framework of developing the RIS, the report prepared by Kantar Public for the European Commission «Disclosure, inducements, and suitability rules for retail investors study» (hereinafter, the 'KANTAR Report') revises the legislative framework of advice in MiFID II and IDD and highlights the importance of training of advisors to adequate the financial recommendation to the client's needs and to reduce mis-selling of financial products¹².

On a separate note, we must consider the amendments introduced to regulate sustainable finance in the framework of MiFID II and IDD.

ESMA Guidelines on certain aspects of the MiFID II suitability requirements¹³, which integrate sustainability preferences, state in its general guideline 11 that «Firms are required to ensure that staff involved in material aspects of the suitability process have an adequate level of skills, knowledge and expertise». This guideline is specified in the following supporting guidelines:

¹¹ The first draft of the RIS, leaked on 8 May 2023, proposes the amendment of Article 25 of MiFID and Article 10 and Annex 1 of IDD to strengthen and align the requirements on knowledge and competence set out in both directives, in line with the proposals made in the present study. According to the detailed explanation of the specific provisions of the proposal: «Article 25 MiFID is amended and specific requirements that are currently stipulated in ESMA Guidelines, together with an additional element regarding sustainable investments, are included in a new Annex V to MiFID. Compliance with the requirements has to be proven by obtaining a certificate. In addition, a minimum requirement for ongoing professional training is introduced in MiFID, in line with existing requirements under IDD. Article 1(2) amends Article 3 MiFID to ensure that persons operating under national exemptions are subject to professional requirements that are at least analogous. In IDD, the requirements on knowledge and competence set out in Annex I are strengthened and aligned in the same way. Compliance has to be proven by a certificate. Moreover, for IDD, the knowledge requirements extend to all insurance intermediaries and thus covers knowledge in relation to any insurance products being distributed, not only insurance-based investment products.» (see EU Retail Investment Strategy: Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and 2016/97/EU of the European Parliament and of the Council as regards the strengthening of Union retail investor protection rules, Brussels, XXX, RIS/2002/1, [...] (2023) XXX draft).

¹² ULIČNÁ, D., VINCZE, M., MOSOREANU, M., et al.: *Disclosure, inducements, and suitability rules for retail investors study: final report*, European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Publications Office of the European Union, 2023, p. 209.

¹³ See ESMA Guidelines on certain aspects of the MiFID II suitability requirements, ESMA35-43-1163, 06/11/2018. Available at: <https://www.esma.europa.eu/document/guidelines-certain-aspects-mifid-ii-suitability-requirements-0> (last consulted 18 April 2023).

«97. Staff must understand the role they play in the suitability assessment process and possess the skills, knowledge and expertise necessary, including sufficient knowledge of the relevant regulatory requirements and procedures, to discharge their responsibilities.

98. Staff giving investment advice or information about financial instruments, structured deposits, investment services or ancillary services to clients on behalf of the firm (including when providing portfolio management) must possess the necessary knowledge and competence required under Article 25(1) of MiFID II (and specified further in ESMA Guidelines for the assessment of knowledge and competence²⁸), including with regard to the suitability assessment.»

On the other hand, EIOPA Guidance on the integration of sustainability preferences in the suitability assessment under the IDD¹⁴ establishes:

«Employees of insurers and insurance intermediaries selling IBIPs need to possess the necessary knowledge and competence with regard to the criteria of the sustainability preferences and are able to explain to customers the different aspects in a language that is clear, succinct, comprehensible and not misleading.

In general, relevant employees of insurance undertakings and insurance intermediaries should possess basic knowledge and competences with regard to the criteria of the sustainability preferences, while employees of insurance undertakings and insurance intermediaries offering insurance-based investment products that promote environmental or social characteristics or that have a sustainable investment objective should have a more detailed knowledge and competence, in accordance with the nature of products they provide advice on. To that effect, insurance undertakings and insurance intermediaries should ensure that employees are appropriately trained and keep their knowledge up-to-date through Continuous Professional Development. »

In view of the former, we can conclude that knowledge and competence requirements for conducting the assessment of sustainability preferences are cross-cutting. The example of this horizontal regulatory treatment of this non-financial knowledge and competence requirements on sustainability could encourage a horizontal treatment of financial qualification.

¹⁴ See EIOPA Guidance on the integration of sustainability preferences in the suitability assessment under the Insurance Distribution Directive (IDD), EIOPA-BOS-22-391, 20 July 2022. Available at: https://www.eiopa.europa.eu/publications/guidance-integration-customers-sustainability-preferences-suitability-assessment-under-idd_en (last consulted 18 April 2023).

AIM AND METHODOLOGY

A) AIM OF THE STUDY

In the framework of the Retail Investment Strategy, considering the scope and findings of the EC Report, the aim of the present study is to give some policy proposals for the improvement of qualifications for financial advisors in the European Union and confirm if there have been substantial changes in national regulations on knowledge and competence requirements since the EFPA 2018 Report. Besides, the present study includes in the scope the assessment of IDD national transposition rules on this topic. Finally, we address the basis for the feasible adoption of a pan-European label for advisors and we propose some guidelines for its implementation.

B) METHODOLOGY

ESMA Guidelines state the following main criteria for the assessment of knowledge and competence:

- (i) Knowledge and competence expected for those providing investment advice should be of a higher standard than those that only give information.
- (ii) Staff providing investment advice or giving information:
 - a. must meet relevant regulatory and legal requirements and business ethics standards,
 - b. must be assessed through the successful completion of an appropriate qualification, which means a qualification or other test or training course that meets the criteria set out in the guidelines,
 - c. must be assessed through having gained appropriate experience, which means having successfully demonstrated the ability to provide advice or to give information through previous work performed, on a full time equivalent basis, for a minimum period of 6 months, and
 - d. must fulfil an internal or external review, on at least an annual basis, to ensure that possess an appropriate qualification and maintain and update their knowledge and competence by undertaking continuous professional development or training for the appropriate qualification.
- (iii) Staff who has not acquired the necessary knowledge or competence cannot provide investment advice or give information unless under supervision for a maximum period of 4 years or shorter if required by the NCA.
- (iv) NCAs or other national bodies identified in the Member State may publish:

- a. a list of the specific appropriate qualifications that meet the criteria of the guidelines, or
 - b. the criteria of ESMA guidelines as well as the characteristics that an appropriate qualification needs to meet to comply with those criteria; or
 - c. both the list and the criteria.
- (v) NCAs must establish the minimum period of 6 months required to gain appropriate experience, or establish a period beyond this minimum differentiating the experience required depending on
- a. the appropriate qualification attained by staff, and
 - b. the services being provided.
- (vi) NCAs must determine whether the review of staff's qualification should be carried out by the firm or an external body.

On the other hand, Article 10, and Annex I of IDD state the following main criteria for the assessment of knowledge and competence:

- (i) Appropriate knowledge and ability required to insurance and reinsurance distributors and employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities ('staff') must allow to complete their tasks and perform their duties adequately.
- (ii) Continuing professional training and development requirements must be complied to ensure that staff maintains an adequate level of performance corresponding to their role and the relevant market, based on at least 15 hours of professional training or development per year, considering the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance or reinsurance distributor.
- (iii) A certificate may be required to prove the successful completion of the training and development requirements.
- (iv) The required conditions regarding knowledge and ability may be adjusted in line with the activity and the products distributed.
- (v) Relevant persons within the management structure who are responsible for distribution in respect of insurance and reinsurance products and all other persons directly involved in insurance or reinsurance distribution must demonstrate the knowledge and ability necessary for the performance of their duties.

- (vi) Insurance and reinsurance intermediaries must demonstrate compliance with the relevant professional knowledge and competence requirements.
- (vii) Natural persons within the management structure responsible for, and any staff directly involved in insurance or reinsurance distribution must be of good repute.

Considering these main criteria, we have extracted **seven elements** that is worth analysing through the national relevant rules on knowledge and competence of financial advisors to assess the possible divergences between them.

For carrying out this assessment, we have analysed Member States MiFID II and IDD transposition rules on knowledge and competence requirements. We have had access to national MiFID II and IDD transposition rules on knowledge and competence requirements from 13 EU Member States: Austria, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, and Spain. Considering its importance in this field, United Kingdom regulation has also been assessed. It is worth noting that linguistic diversity represents a challenge for accessing the relevant documentation.

Besides, we have conducted a survey among associations in Member States by means of sending a questionnaire¹⁵ through which we have gathered information on implementation of ESMA Guidelines and IDD relevant rules on knowledge and competence, and the opinion of the respondents on the feasibility of creating a pan-European label for financial advisors. We have received input from 12 of the 27 EU Member States (Austria, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Poland, Spain). We also have sook feedback from United Kingdom considering its importance in this field.

Finally, we have considered the data provided in the EIOPA Report on the application of the IDD and the EC Report. The EC Report is based on the data collected through ESMA's and EIOPA's insight on the existing requirements regarding knowledge and competence at national level and the existing market practices¹⁶.

Finally, we asked ourselves how to improve knowledge and competence of financial advisors in the framework of the RIS to strengthen trust in advisors (the main driver of retail investment, as the KANTAR Report highlights) and protect clients against mis-selling by making advisors

¹⁵ See Annex III. We have forwarded questionnaires to EFPA National Members and other colleagues that are in position to answer some relevant questions about the national implementation of ESMA Guidelines and IDD relevant rules on knowledge and competence.

¹⁶ For the preparation of this report, the European Commission sought ESMA's and EIOPA's input. According to the EC Report, ESMA distributed a survey to which 26 NCAs replied (24 EU Member States and 2 EEA States) and EIOPA distributed a survey to which 24 NCAs replied (23 EU Member States and 1 EEA State). See EC Report, p. 8.



aware of how best to manage conflicts of interest and tailor recommendations to the client's profile, specially to align investments with ESG objectives.

PRELIMINARY ISSUES

Before addressing the various elements to be analysed in the different national rules on knowledge and competence, it is useful to make some fundamental observations regarding the definition of qualification and the general regulation of financial advice, considering that it is a complex regulatory framework which lacks a taxonomy and does not clearly identify the basic principles.

A) DEFINITION OF ‘QUALIFICATION’

As ESMA specifies, ‘knowledge and competence’ means having acquired ‘appropriate qualification’ and ‘appropriate experience’ to fulfil the obligations related to the provision of information, assessment of suitability and appropriateness, and reporting to clients (articles 24 and 25 of MiFID II), in providing advice or giving information. As for ‘appropriate qualification’ ESMA means a qualification or other test or training course that meets the criteria specified in the guidelines; and as for ‘appropriate experience’ that a member of staff has successfully demonstrated the ability to perform the relevant services through previous work performed, on a full-time equivalent basis, for a minimum period of 6 months.

If the aim of the Guidelines is the harmonization of the level of knowledge and competence in the EU market, then it is critical to understand that there is a fundamental difference between requiring from a professional to attain a qualification or requiring from a professional to participate in a training programme. If the requirements are diverse, it shall end up having different standards and different levels of knowledge and competence by the staff providing advice or giving information.

As for IDD, the directive does not refer to ‘qualification’, but to ‘knowledge and ability’ and ‘knowledge and competence’ indistinctively, without defining those terms.

In view of the former, we can conclude that it is a complex matter in which open-ended concepts are used from a regulatory policy point of view to find a balance between a minimum harmonization and the necessary flexibility for adapting to the culture and situation of the Member States. This does not preclude to move towards a taxonomy which contribute to a better regulation.

On the other hand, when stating criteria for knowledge and competence for staff providing advice or giving information, neither ESMA Guidelines nor IDD define the minimum level and intensity of knowledge and competence with application of any of the EU recommendations on

qualifications and qualifications standards that have been in place in EU Member States for some time, namely, the European Qualifications Framework (EQF)¹⁷.

EQF defines ‘qualification’ as a formal outcome of an assessment and validation process which is obtained when a competent body determines that an individual has achieved learning outcomes to given standards. Moreover, EQF provides eight levels of qualifications described through learning outcomes (knowledge, skills, and competence), covering both work and study situations, academic as well as vocational settings, and initial as well as continuing education or training, irrespective of the learning or institutional context from basic education, through school and unskilled worker levels up to doctoral or senior professional levels¹⁸. Therefore, Member States are invited to relate their national qualifications levels to the reference established by the EQF, improving comparability, transparency, and portability of qualifications within EU. On 22 May 2017 the Council adopted a revised EQF replacing the Recommendation of 2008¹⁹, under which all Member States and several Non-Member States committed themselves to further develop the EQF²⁰.

In 2015, the EQF recommendation was successfully integrated with the European Credit System for Vocational Education and Training (ECVET)²¹ and the European Quality Assurance

¹⁷ The European Qualifications Framework for lifelong learning consists in a common reference framework which serves as a translation device between different qualifications systems both for general and higher education and for vocational education and training. It promotes employability, mobility and social integration of workers and learners within European Union, as it constitutes a common European reference point for international sectoral organisations to relate its qualifications systems. See Recommendation of the European Parliament and the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning, Official Journal of the European Union, 6 May 2008.

¹⁸ See EUROPEAN COMMISSION, «Explaining the European Qualifications Framework for Lifelong Learning», Education and Culture DG, Lifelong Learning: Education and Training policies, Coordination of Lifelong Learning Policies, Office for Official Publications of the European Communities, 2008, p. 4 (available at: <https://europa.eu/europass/system/files/2020-05/EQF-Archives-EN.pdf>; last consulted 14 April 2023). See also: EUROPEAN COMMISSION, « The European Qualifications Framework: supporting learning, work and cross-border mobility», Luxembourg: Publications Office of the European Union, 2018 (available at: <https://ec.europa.eu/social/BlobServlet?docId=19190&langId=en>; last consulted 14 April 2023).

¹⁹ Council Recommendation of 22 May 2017 on the European Qualifications Framework for lifelong learning and repealing the recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning, Official Journal of the European Union, 15 June 2017.

²⁰ By September 2021, 35 countries had formally linked (‘referenced’) their national qualifications frameworks to the EQF: Austria, Belgium (Flanders and Wallonia), Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, the Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kosovo, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Sweden, Switzerland and Turkey. The remaining countries are expected to follow in 2021, which means that the first stage of EQF referencing is nearly finished. See: <http://www.cedefop.europa.eu/en/events-and-projects/projects/european-qualifications-framework-eqf> (last consulted 14 April 2023).

²¹ While the main objective of the EQF is to increase the transparency, comparability, and portability of acquired qualifications, the European Credit System for Vocational Education and Training (ECVET) is a methodological

Reference Framework for Vocational Education and Training (EQAVET)²² by the European Banking and Financial Services Training Network (EBTN)²³, developing the ‘Triple E Standard’²⁴.

The **Triple E Standard** uses the European definition of qualification, as «the formal outcome (certificate, diploma or title) of an assessment and validation process which is obtained when a competent body determines that an individual has achieved learning outcomes to given standards and/or possesses the necessary competence to do a job in a specific area of work». Therefore, a qualification «confers official recognition of the value of learning outcomes in the labour market and in education and training» and can be «a legal entitlement to practice a trade»²⁵. According to this definition, a Triple E qualification is described with learning outcomes which are clear statements of what a learner is expected to know, understand, or be able to do at the end of a learning process. Moreover, each Triple E qualification is referenced to a level (EQF level or national equivalent, if available). It is defined in terms of volume (using credit points recommended by ECVET) and finally it is subject to a quality assurance regime.

framework that complements EQF by facilitating the transfer, recognition, and accumulation of learning outcomes from one qualifications system to another. It is applicable for all learning outcomes achievable at all levels of the EQF. See Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Credit System for Vocational Education and Training, Official Journal of the European Union, 8 July 2009. Further information available at: <http://www.cedefop.europa.eu/en/events-and-projects/projects/european-credit-system-vocational-education-and-training-ecvet> (last consulted 14 April 2023).

²² ECVET should be underpinned by the common principles of the European Quality Assurance Reference Framework for Vocational Education and Training (EQAVET), a reference instrument to help Member States to promote and monitor continuous improvement of their vocational education and training systems based on common European references. EQAVET should be regarded as a ‘toolbox’ that comprises a quality assurance and improvement cycle (planning, implementation, evaluation/assessment, and review/revision) based on a selection of quality criteria, descriptors, and indicators applicable to quality management at both vocational education and training system and provider levels. The aim of EQAVET is to contribute to quality improvement in vocational education and training and to promote mutual trust, mobility of workers and learners, and lifelong learning within EU Member States. Therefore, it supports the implementation of the EQF, and the ECVET. See Recommendation of the European Parliament and the Council of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training, Official Journal of the European Union, 8 July 2009. Further information available at: <https://www.eqavet.eu/What-We-Do/European-Quality-Assurance-Reference-Framework> (last consulted 14 April 2023).

²³ EBTN is an international not-for-profit association, which aim is to become the standard-setting body for the accreditation, certification and qualification of knowledge, skills and competences in the European financial services sector. Further information available at: <http://www.ebtn-association.eu> (last consulted 14 April 2023).

²⁴ The Triple E Standard is a quality standard referred to EQF, ECVET and EQAVET for qualifications in the European financial industry, with a focus on the banking sector. It constitutes an accreditation recognition for institutions of the quality of qualifications they provide. See: <https://ebtn-association.eu/triple-e/> (last consulted 14 April 2023).

²⁵ EUROPEAN CENTRE FOR THE DEVELOPMENT OF VOCATIONAL TRAINING (CEDEFOP), «Terminology of European education and training policy: a selection of 130 terms», Second Edition, Publications Office of the European Union, Luxembourg, 2014, p. 144.

For instance, EFPA's certificates European Financial Advisor and European Investment Practitioner²⁶, have been granted the Triple E Standard of quality.

It is worth remembering that the European Council has stated that «Coherence, complementarity and synergies at national and Union levels should exist between the implementation of the EQF, national qualifications frameworks or systems and tools on transparency and recognition of skills, competences and qualifications, including those for quality assurance, credit accumulation and transfer and tools developed in the context of the European Higher Education Area on transparency and recognition of skills, competences and qualifications»²⁷.

Accordingly, the Council has recommended that EU Member States «take measures, so that all newly issued qualification documents by the competent authorities (e.g., certificates, diplomas, certificate supplements, diploma supplements), and/or registers of qualifications contain a clear reference to the appropriate EQF level»; and «encourage the use of EQF by social partners, public employment services, education providers, quality assurance bodies and public authorities to support the comparison of qualifications and transparency of the learning outcomes»²⁸.

The EFPA 2018 Report showed significant divergences among Member States in the implementation of ESMA Guidelines, particularly caused by a lack of reference to EU recommendations on qualifications frameworks for vocational education and training²⁹. This

²⁶ See: <https://efpa-eu.org/index.php/standards-qualifications/#certificates> (last consulted 14 April 2023). See also Annex IV.

²⁷ Council Recommendation of 22 May 2017 on the European Qualifications Framework for lifelong learning and repealing the recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning, Official Journal of the European Union, 15 June 2017, recital 25.

²⁸ Council Recommendation of 22 May 2017 on the European Qualifications Framework for lifelong learning and repealing the recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning, Official Journal of the European Union, 15 June 2017, recommendations 4, 5 and 7.

²⁹ See ZUNZUNEGUI, F. / CORBAL, P.: «In defining the level and intensity of knowledge and competence that would meet ESMA Guidelines, the lack of use of EU recommendations on qualifications frameworks for vocational education and training (EQF, ECVET, EQAVET) could explain the divergent implementation of MiFID II knowledge and competence requirements. The divergences found constitute a challenge for the fulfilment of ESMA requirements within EU Member States, especially in the case of cross-border firms, which must comply with different benchmarks in each of their branches. Furthermore, staff providing relevant services would find difficulties to relocate in other EU Member States due to these divergences. Potentially, it could also drive regulatory arbitrage in qualifications against MiFID II goals. The application by ESMA of selected EU qualifications standards could mitigate these risks. It is recommended to use the common European definition of a qualification, the levels of qualifications as defined by EQF as a measure of complexity of qualification requirements, and the quality assurance mechanism for validating qualifications as compliant. » («Assessment of Implementation in EU Member States of MiFID II Requirements on Knowledge and Competence», July 2018, p. 26; available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3384628).

conclusion of the Report was highlighted by later studies on this matter³⁰. These common tools could impulse the harmonization process. Especially useful is EQF, which offers a standard definition of what a qualification is. From this perspective, a **qualification is not a training programme**, and these two concepts must not be confused if quality regulations are being looked for.

Besides, ESMA differentiates the level and intensity of knowledge and competence expected for those providing advice from those that only give information on investment products and services, being the former of a higher standard. ESMA also requires a proportionate application of knowledge and competence adequate to the scope and degree of complexity of the services provided. Also here, it would be more than advisable to take advantage of the existing EQF which provides eight levels of qualifications described through learning outcomes (knowledge, skills, and competence). With this approach, the system is based on what an individual knows and can do rather than on how long a training of different quality the individual participated. Therefore, although training is an important part on the road to upgrade knowledge and skills, a qualification brings a strong quality of results orientation. It is also worth noting that there are different levels of required knowledge in the process of informing about products and even more so in the process of investment advice. The scope of topics does not automatically set the right level of required knowledge and competence.

As these same flaws are present in IDD, it may be also the cause of the divergences between Member States transposition rules on knowledge and competence that are analysed below.

These divergences could hinder the role of knowledge and competence requirements of enhancing trust in advisors in the framework of the RIS and, therefore, indirectly, also diminish participation of retail investors in markets; with negative consequences in the necessary alignment of investments with ESG objectives.

B) REGULATION OF FINANCIAL ADVICE

Article 4.1.4 of MiFID II defines ‘investment advice’ as the provision of personal recommendations to a client, either upon the client’s request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments.

Besides, Article 9 of MiFID II Commission Delegated Regulation³¹ establishes:

³⁰ See KOVÁČOVÁ, L.: «Changes in the organizational models and in the labour demand and employment relationships in the banking sector due to digitalisation and the EU Directive MiFID II», IODICE D. (Ed.), *MiFID II e Digitalizzazione: Come cambia la domanda di competenze e di protezione del lavoro / MiFID II and Digitalization: How the demand for skills and job protection is changing*, Adapt University Press, 2021, p. 124.

³¹ Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, C/2016/2398, OJ L 87, 31.3.2017, p. 1–83.

«For the purposes of the definition of ‘investment advice’ in Article 4(1)(4) of Directive 2014/65/EU, a personal recommendation shall be considered a recommendation that is made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor.

That recommendation shall be presented as suitable for that person, or shall be based on a consideration of the circumstances of that person, and shall constitute a recommendation to take one of the following sets of steps:

- (a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;
- (b) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

A recommendation shall not be considered a personal recommendation if it is issued exclusively to the public. »

Similarly, Article 2.1.15 of IDD defines ‘advice’ as «the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts».

As we have advanced, the KANTAR Report revises the legislative framework of advice in MiFID II and IDD and highlights the importance of training of advisors to adequate the financial recommendation to the client’s needs and to reduce mis-selling of financial products³².

Besides, the KANTAR Report shows concern on the lack of participation of retail investors in financial markets, and the arise of conflicts of interest, even posing the possibility of banning inducements. In the debate among the different stakeholders, it has been proposed³³ as a more efficient approach than banning inducements to require advisors an ethic commitment to act in the client’s best interest (acc. Article 24.1 MiFID II) and to enhance two key set of measures provided in MiFID II: the Product Oversight and Governance (POG) and the Suitability Assessment rules. POG binds advisor and narrows the scope of the suitability assessment that advisors must carry out before providing advice. Consequently, POG rules could be enhanced to consider the outcomes of the charging structure³⁴ so the products being recommended represent not only suitable solutions but optimal in terms of value for money and, therefore, this must also be included as an element of the suitability assessment. To sum up, this proposal argues that the way for retail investors to obtain the best outcomes in their investment is not to

³² ULIČNÁ, D., VINCZE, M., MOSOREANU, M., et al.: *Disclosure, inducements, and suitability rules for retail investors study: final report*, European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Publications Office of the European Union, 2023, p. 209.

³³ See the letter sent by EFPA to the EC regarding the proposed ban on inducements, available at: <https://efpa.eu.org/index.php/2023/02/08/efpa-sends-a-letter-to-the-ec-regarding-the-proposed-ban-on-inducements/> (last consulted 21 April 2023).

³⁴ ESMA Consultation Paper on Review of the Guidelines on MiFID II product governance requirements, 8 July 2022 (ESMA35-43-3114). In this sense, ESMA has considered a good practice “Removing certain products from the product offer because the outcomes of the product review revealed that they do not longer offer value for money”.

ban inducements, but –as the KANTAR Report summarizes– to «more generally improve the quality of advice, ensure that advisors meet minimum requirements in terms of knowledge and competence and more generally reinforce the duty of care of retail financial product distributors, as well as to make sure that the client is well informed and understands the advice».

However, to make POG and Suitability Assessment rules effective, it is essential to count with harmonized knowledge and competence requirements and a common basis of qualification, namely, a **pan-European label for advisors**.

Qualified advisors must be identified and differentiated from the providers of “financial guidance” (a middle ground between information and advice in which the client may sense that is being advised), especially within the framework of Fintech services. Therefore, the approach suggested by the High-Level Forum on CMU on harmonization of high qualification standards for advisors is strongly advisable.

Within the framework of the RIS and sustainable finance, harmonization and clarification of advisor training contributes to strengthening confidence in advisors, with better management of conflicts of interest, encouraging market participation and the orientation of retail investments towards sustainable finance.

KEY ELEMENTS FOR THE ASSESSMENT OF KNOWLEDGE AND COMPETENCE REQUIREMENTS UNDER MIFID II AND IDD

To raise qualification standards, increase the quality of advice, protect retail investors, and make it easier for them to have quality financial advice on a cross-border basis, the EC Report³⁵ points to the possibility of tightening qualification requirements and standards at European level under the Retail Investment Strategy. Among the options for improvement, the EC Report considers establishing professional certification as a mandatory requirement at European level, transferring some elements of the ESMA Guidelines to the first legislative level of MiFID II, extending the IDD requirements for continuing education to apply also to access to the profession, and including some sustainability aspects in the training of advisors. According to the EC Report, any of these options should be adopted while preserving the principle of proportionality considering the size and scope of activities of each financial advisor.

Considering these objectives, in this section we analyse the national relevant rules on knowledge and competence of financial advisors distinguishing seven elements extracted from the criteria stated in ESMA Guidelines and IDD, to assess the possible divergences between local implementation rules.

1.- LIST OF QUALIFICATIONS OR CRITERIA PUBLISHED BY THE NATIONAL COMPETENT AUTHORITIES (NCAS)

ESMA Guidelines (§ 21) establish that NCAs or other national bodies identified in the Member State may publish (a) a list of the specific appropriate qualifications that meet the criteria of the guidelines, or (b) the criteria of the guidelines as well as the characteristics that an appropriate qualification needs to meet to comply with those criteria; or (c) both the list and the criteria. Therefore, we have assessed which implementation option has been chosen by the NCA in each analysed jurisdiction.

According to the data of the EC Report, «The large majority of NCAs have published a list of criteria and/or a list of professional requirements or recognised qualifications or certifications.». Indeed, according to our research, most NCAs have decided to publish the criteria that an appropriate qualification must meet according to ESMA Guidelines (e.g., Hungary, Italy, Portugal), and some of them have also published a list of the specific appropriate qualifications

³⁵ See EC Report, pp. 12-13.

that effectively meet those criteria (e.g., Luxembourg³⁶, Spain³⁷). None of the NCAs among the scope of our study have opted to only publish a list of appropriate qualifications.

There are Member States (e.g., Poland, Estonia³⁸) that have only published the translation of ESMA Guidelines and have announced the inclusion of supervisory practices on their compliance. Thereafter the burden and responsibility of the interpretation was put on the investment firms and as a result deepened the discrepancies in implementation.

Special attention must be paid to States in which a system to assess knowledge and competence of staff providing relevant services was already in place. Paradigm of these cases is Ireland, which have had a well-developed system for some time.

In **Ireland's** regime, the **Central Bank** has included the criteria established in ESMA Guidelines and IDD in its general existing regime set out in the Minimum Competency Code³⁹, rather than issue a list of specific appropriate qualifications that meet ESMA Guidelines. Therefore, a person providing relevant services⁴⁰ shall not be taken to comply with the required minimum competency standards unless he or she has one or more '**recognised qualifications**' (included in the **list** set in Appendix 4 of the Minimum Competency Code⁴¹), **at least 6 months' experience** (on a full-time equivalent basis) and complies with requirements of **continuing professional development** (CPD)⁴². Notwithstanding, the Central Bank of Ireland recognised certain special rules to be met by a person considered 'new entrant'⁴³ or who is performing a 'prescribed script function'⁴⁴. Besides, the Central Bank of Ireland has included '**additional standards for certain functions**' to meet the requirements set out in ESMA Guidelines and IDD⁴⁵. These additional standards have been implemented as part of the specifications that a qualification should meet to obtain recognition and be included in the existing list.

³⁶ See § 6 of Circular CSSF 17/665 of 31 July 2017, and its development in Circular CSSF 17/670 of 13 October 2017.

³⁷ See §§ 20 and following of Guía Técnica 4/2017 de la Comisión Nacional del Mercado de Valores, para la evaluación de los conocimientos y competencias del personal que informa y que asesora, de 27 de junio de 2017.

³⁸ See the FSA Decision of the Board of May 9, 2016, No. 1.1-7/59.

³⁹ See the Minimum Competency Code 2017 issued by the Central Bank of Ireland (available at: <https://www.centralbank.ie/regulation/how-we-regulate/authorisation/minimum-competency>).

⁴⁰ See Central Bank of Ireland's Minimum Competency Code 2017, Part 1, Section 1.2, p. 8.

⁴¹ The updated list of recognised qualifications is available at: <https://www.centralbank.ie/regulation/how-we-regulate/authorisation/minimum-competency>

⁴² See Central Bank of Ireland's Minimum Competency Code 2017, Part 1, Section 1.3, pp. 8-9.

⁴³ As defined in Central Bank of Ireland's Minimum Competency Code 2017, pp. 5-6.

⁴⁴ As defined in Central Bank of Ireland's Minimum Competency Code 2017, p. 6.

⁴⁵ See Central Bank of Ireland's Minimum Competency Code 2017, Part 2, pp. 17-18.

Netherlands has also adapted its own existing system to ESMA Guidelines. The system was based on the Dutch Securities Institute (DSI) standards for self-regulation⁴⁶ and entailed to pass a knowledge exam by new license holders and continuing professional development (CPD) exams on integrity, knowledge, and competence every 3 years. Thus, DSI has been responsible for the licensing of financial advisers for years either through its own exams or through the accreditation of exams from other institutes and professional bodies. Although there is no legal requirement to be affiliated with or certified by DSI, the Institute has signed a covenant with the Dutch Securities Commission (AFM) in which DSI agrees to ensure that certified financial professionals are compliant with ESMA Guidelines and, in return, the AFM supports DSI's certification program. Therefore, DSI has updated its learning goals considering criteria stated in ESMA Guidelines.

As for **United Kingdom**, its regime is included in the Financial Conduct Authority (FCA) Handbook. It comprises both a high-level competence requirement that applies to individuals engaged in the regulated activity in all UK authorised firms as set out in the FCA's Senior Management Arrangements, Systems sourcebook ('SYSC'), and more detailed requirements for certain retail activities, including the need to attain a qualification where relevant, as introduced below and set out in our Training and Competence sourcebook ('TC')⁴⁷. Moreover, for regulated activities within TC⁴⁸ there are certain qualification requirements to be met by attaining corresponding appropriate qualifications⁴⁹. This training and competence regime was amended to comply with ESMA Guidelines⁵⁰. It has also been amended for specifying requirements for firms carrying on insurance distribution activities⁵¹.

In view of the above, the fact that ESMA Guidelines establish minimum standards and consider various options for their implementation allows that NCAs require greater levels of knowledge and competence and chose different ways of implementation among the Member States, which

⁴⁶ The Dutch Securities Institute (DSI) is the Dutch body designated by the Dutch Securities Commission (AFM) to implement ESMA Guidelines. Although AFM is responsible of enforcing the compulsory norms on knowledge, skills and expertise stated in ESMA Guidelines, according to the covenant of cooperation signed by DSI and AFM in 2017, AFM committed itself to supporting DSI's certification program in relation to the Guidelines. Further information is available at: <https://www.dsi.nl/en/certification/> (last consulted 14 April 2023).

⁴⁷ See FCA Training and Competence regime (a summary is available at: <https://www.fca.org.uk/firms/training-competence>), contained in FCA Handbook, available at: <https://www.handbook.fca.org.uk/handbook> (last consulted 14 April 2023).

⁴⁸ See the FCA's TC Appendix 1.

⁴⁹ The FCA's TC Appendix 4 contains a list of appropriate qualifications corresponding to regulated activities subject to qualification requirements as set in TC Appendix 1.

⁵⁰ The FCA decided not to list specific appropriate qualifications that meet the criteria and characteristics of ESMA Guidelines, but to introduce changes in the general existing regime, so that firms need to consider ESMA Guidelines and ensure that the qualification selected as appropriate from the general list of qualifications meets ESMA Guidelines (see FCA's Policy Statement PS17/14, July 2017, p. 117).

⁵¹ See Chapter 4.2 of FCA's TC, in relation to Chapter 28 of FCA's SYSC.

might be leading to a divergent implementation. For overcoming this challenge, specific actions within the framework of ESMA' Supervisory Convergence Work Programme would be useful to ensure a level playing field.

On the other hand, knowledge and competence requirements in the IDD scope are stated in the Directive (Level 1 of Lamfalussy); being IDD a minimum harmonization directive. Therefore, Member States have issued transposition rules including those requirements with a wide margin of discretion.

According to the EIOPA Report on the application of the IDD⁵²:

« Six Member States replied negatively to Q3 [Q3 - Did your Authority (or the relevant National Body) publish a list of specific qualifications/certification that prove compliance with the requirements set out in Q2?] (DK, EE, LT, LU, MT, PT). However all of them except MT, have confirmed in Q4 [Q4 - If you replied NO, please indicate if your Authority (or the relevant National Body) published the characteristics that a qualification needs to meet in order to comply with the requirements in Q2] that these requirements are prescribed in legal acts, mainly in national legislation i.e. mostly in binding legal acts. Therefore, according to the answers provided to both Q3 and Q4, the requirements are mainly provided in national legislation (IE, BG, HR, IT, FR, PT, SE, ES, LI, BE, SK, SI, EE, PL, LU, LT, DK, EL). »

Most of Member States in the scope of our study have included criteria on knowledge and competence in their insurance laws (e.g., Czech Republic, France, Germany, Luxembourg). Some of them have merely include IDD general criteria and Annex I of IDD in their own legislation (e.g., Austria, Poland). Other Member States (e.g., Ireland, Spain) has issued a list of qualifications, apart from including the relevant criteria in their legislation.

2.- BUSINESS ETHICS STANDARDS INCLUDED

ESMA Guidelines (§ 14) state that staff providing investment advice or giving information must «meet relevant regulatory and legal requirements and business ethics standards». Consequently, we have analysed whether the criteria that qualifications must meet to be considered appropriate include **business ethics standards**.

According to the assessment conducted, **this is one of ESMA Guidelines requirements that shows a wider divergence in its implementation.**

The EC Report states that «6 NCAs mentioned that also good repute requirements have to be fulfilled.».

According to our research, around only half of the EU Member States of which we have obtained information include ethics standards as part of the requirements of their appropriate

⁵² See EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: Annexes I-VIII to the Report on the application of the Insurance Distribution Directive (IDD), EIOPA-BoS-21/582, 6 January 2022, p. 16.

qualifications. Thus, only France⁵³, Ireland, Luxembourg⁵⁴, Netherlands⁵⁵, Poland⁵⁶ and Portugal⁵⁷, along with United Kingdom, have expressly included ethics as part of the criteria that qualifications must meet to be considered appropriate.

In the case of **Ireland**, designate holders must complete a **CPD session in relation to ethics** of at least one hour in duration as part of its **CPD requirements**⁵⁸. Moreover, competencies that recognised qualifications must cover include the recognition of ethical issues arising in relation to the conduct of business⁵⁹. This applies both to MiFID II and IDD scope.

United Kingdom has included **achieving a good standard of ethical behaviour** as part of **competence requirements**⁶⁰ through meeting the compulsory Statements of Principle and Code of Practice for Approved Persons ('APER') or the Code of Conduct ('COCON'), as applicable, included in the High Level Standards established in FCA Handbook. Moreover, when referring to accredited bodies requirements, FCA's TC states that they will be expected «to have a code of ethics and to ensure that its code of ethics and verification service terms and conditions do not contain any provisions that conflict with APER or COCON»⁶¹.

This standard of ethical behaviour required in the United Kingdom's has now to be interpreted in the wider context of its new Consumer Duty⁶², which introduces a new Consumer Principle that requires firms to act to deliver good outcomes for retail customers. Therefore, the Consumer Duty places us in the objective of improving the quality of the advisory process by highlighting the importance of the results of the recommendations.

⁵³ See Position – recommandation AMF L'évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018, Section 2.1, p. 2.

⁵⁴ However, it is worth noting that Luxembourg's regime only reproduces the general requirement stated in ESMA Guidelines (§ 14), without further detail. See § 3 of Circular CSSF 17/665 of 31 July 2017, and § 1 of Circular CSSF 17/670 of 13 October 2017.

⁵⁵ DSI-certified professionals subscribe to a Code of Conduct supervised by fully independent Ethics Committee, which violation can subject certified professionals to ethics enforcement measures and sanctions (e.g., reprimands, fines, suspension, or expulsion from the DSI registers). See Article 7 of DSI General Regulations, 2 July 2021.

⁵⁶ See Ordinance the Minister of Finance of May 29, 2018, on detailed technical and organizational conditions for investment firms, banks referred to in Art. 70 sec. 2 of the Act on Trading in Financial Instruments, and custodian banks, § 39.1.

⁵⁷ See Annex of Regulamento da CMVM n° 3/2018.

⁵⁸ See Central Bank of Ireland's Minimum Competency Code 2017, Part 3, Section 3.3, p. 21, in relation to Part 1, Section 1.7.1, p. 13.

⁵⁹ See Central Bank of Ireland's Minimum Competency Code 2017, Appendix 3, Section 19, p. 44.

⁶⁰ See FCA's TC 1.1.4G, 'meaning of competence'.

⁶¹ See FCA's TC Appendix 6.1.1G, §17.

⁶² See: <https://www.fca.org.uk/publications/policy-statements/ps22-9-new-consumer-duty> (last consulted 18 April 2023).

It is worth noting that **slightly imprecise official translation of ESMA Guidelines into different languages** creates divergences in the content of the guidelines that might cause their **wrong implementation**. That is the case of the term ‘business ethics standards’, which has been translated as ‘conduct of business rules’ in some languages, such as Spanish and Portuguese. In fact, Spanish National Securities Market Commission (CNMV) has confirmed EFPA Spain that, according to its Technical Guide implementing ESMA Guidelines⁶³, it is not mandatory that qualification providers have ethics code of conduct to have its qualifications included in the list of specific appropriate qualifications issued by CNMV.

Considering the foregoing, **Member States compliance with the requirement of business ethics standards is of utmost importance** to achieve the objectives pursued by ESMA Guidelines.

Finally, regarding IDD, paragraph 3 of Article 10 of IDD mentions as a key aspect of “professional and organisational requirements” that «Natural persons working in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary, who pursue insurance or reinsurance distribution shall be of good repute». Besides, Annex I of IDD include among the minimum professional knowledge and competence requirements «minimum necessary knowledge of business ethics standards». Therefore, all the transposition rules analysed in the scope of the present study include this minimum requirement (i.e., Austria, Czech Republic, France, Germany, Hungary, Ireland, Italy, Luxembourg, Poland, Spain).

3.- MINIMUM FORMAL EDUCATION REQUIRED

We have assessed whether a minimum previous formal education or training is required to access a compliant qualification.

ESMA Guidelines do not specify the requirement of a minimum formal education to access a qualification. However, according to the EC Report, «Almost all NCAs usually require a minimum education (entry) requirement (secondary school).».

⁶³ See Guía Técnica 4/2017 de la Comisión Nacional del Mercado de Valores, para la evaluación de los conocimientos y competencias del personal que informa y que asesora, de 27 de junio de 2017 (available at: http://www.cnmv.es/DocPortal/Legislacion/Guias-Tecnicas/GuiaTecnica_2017_4.pdf; last consulted 14 April 2023). The Spanish version of ESMA Guidelines shows that ‘business ethics standards’ seems to have been initially translated as ‘conduct of business rules’ (*‘normas de conducta’*), having added afterwards the word ‘ethic’ (*‘ética’*): *‘normas de conducta.ética.’*. However, this amendment has not been made accordingly in the Technical Guide published by the Spanish Securities Commission (CNMV), in which ‘business ethics standards’ has been translated simply as ‘conduct of business rules’ (*‘normas de conducta’*). Therefore, in Spain, staff providing relevant services must only meet regulatory and legal requirements and *conduct of business rules*, different from the ESMA Guidelines requirement of meeting *business ethics standards*.

Several of the **EU Member States** of which we have obtained information **have included this prerequisite as a condition to fulfil the rest of the requirements** (e.g., Czech Republic, Hungary, Ireland, Italy).

For instance, in **Czech Republic**, the minimum general knowledge shall be substantiated by a certificate of graduation (secondary education diploma) or a certificate of higher education⁶⁴. The same requirement is included in the scope of IDD⁶⁵.

In **Ireland**, the Central Bank's Minimum Competency Code requires that appropriate qualifications have their **underlying academic qualification** included in the National Framework of Qualifications at level 7 (equivalent to **level 6 EQF**)⁶⁶. This applies also in the IDD scope.

In the case of **United Kingdom**, for qualification providers aiming to include its qualifications in the list of appropriate qualifications, FCA will expect them «to set out the recommended prior knowledge, attainment or experience for candidates» and, where relevant, «the exemption policy for candidate's prior learning or achievement»⁶⁷. Therefore, **qualification providers may eventually establish certain minimum formal education requirements**.

With respect to the transposition of IDD requirements on knowledge and competence, according to the data of the EC Report:

«Almost all National Competent Authorities (NCAs) (23) noted that it is a requirement for the natural persons providing advice on IBIPs to have certain qualifications and/or experience:

- Some Member States (9) provided that the qualifications should not be lower than a certificate of advanced secondary education.
- In some cases, Member States (3) also require university degrees or master degrees depending on the type of education and/or the role they perform in the undertaking.
- One Member State noted that qualifications must be included on the National Framework of Qualifications at Level 7 or higher (equivalent to Level 6 on the European Qualifications Framework).
- One Member State mentioned that there are no additional requirements established in the Insurance Code for qualification and/or experience beyond those for provided for in the persons involved in insurance distribution activities” ».

⁶⁴ See Section 14b of Act No. 256/2004 Sb., on Capital Market Business, as amended.

⁶⁵ See section 56 of Law dated July 26, 2018, on the distribution of insurance and reinsurance.

⁶⁶ See Central Bank of Ireland's Minimum Competency Code 2017, Part 2, p. 18.

⁶⁷ See FCA's TC Appendix 5.1.1G, §4.

According to the EIOPA Report on the application of the IDD⁶⁸:

«Almost every Member State (23 Member States) noted that it is required for the natural persons providing advice on IBIPs to have certain qualifications and/or experience:

- Some MS (CZ, EL, HR, IT, LV, PL, PT, SI, SK) provided that the qualifications should not be lower than a certificate of advanced secondary education

- In some cases, Member States also require university degrees or master degrees depending on the type of education and/or the role they perform in the undertaking (FR, HU, LU)

- IE noted that qualifications must be included on the National Framework of Qualifications at Level 7 or higher (equivalent to Level 6 on the European Qualifications Framework).

- BG mentioned that there are no additional requirements established in the Insurance Code for qualification and/or experience beyond those for provided for in the persons involved in insurance distribution activities. »

In view of the above, we can conclude that the requirement of minimum formal education to access a compliant qualification constitutes a reasonable measure that **should have been included in ESMA Guidelines and IDD**. However, being randomly considered only by some Member States, it might hinder the movement of staff providing relevant services within the EU.

4.- CRITERIA TO BE MET BY THE QUALIFICATION

ESMA Guidelines establish that knowledge and competence must be assessed through the successful completion of an appropriate qualification (§ 20.a), which means «a qualification or other test or training course that meets the criteria set out by the guidelines» (§ 4.g).

Moreover, criteria for knowledge and competence for staff giving information or investment advice about investment products, investment services or ancillary services are respectively named in § 17 and § 18 of ESMA Guidelines. However, those criteria are defined by broad learning outcomes (‘understand’, ‘have basic knowledge’) and practical skills (‘assess’, ‘fulfil obligations’), without offering a benchmark to one of the eight qualifications levels provided by the EQF. Moreover, the criteria do not provide information on the characteristics that a qualification must meet, i.e., classroom learning or distance learning; training borne by the firm (internal) or by an external body (external); number of class hours for providing advice and for giving information (training duration); and separation between trainer and evaluator.

⁶⁸ See EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: Annexes I-VIII to the Report on the application of the Insurance Distribution Directive (IDD), EIOPA-BoS-21/582, 6 January 2022, p. 15.

In fact, it is not an intrinsic feature of a qualification to present a duration. A description of a professional qualification may indicate a learning effort needed to obtain it. However, national regulations require training courses to have a certain number of hours.

According to the EC Report: «Beyond the secondary school requirement, 15 NCAs consider that the “appropriate qualification” is assessed through:

- The achievement of a recognised qualification (1 NCA).
- A successful examination organised by the NCA (4 NCAs) or by private bodies (2 NCAs) supervised by the NCA (1 NCA).
- The achievement of a qualification or, alternatively, an examination recognised by the NCA (6 NCAs) or organised by the NCA (1 NCA).».

Besides, «3 NCAs did not mention specific qualification requirements other than the criteria listed in the ESMA guidelines.».

In relation to training duration, according to the EC Report «Among the 8 NCAs that provided a list of qualifications:

- 5 NCAs replied that there is no minimum of training hours.
- Qualifications recognised by the NCA can have different training hours:
 - 1 NCA with qualifications of 750 or 900 hours,
 - 1 NCA with 33 hours for the preparation to the exam or 70 training hours for qualifications organised by private bodies,
 - 1 NCA with 150 hours (although firms may narrow down the threshold on the basis of specified proportionality criteria).».

Finally, «Among the 8 NCAs that provided a list of qualifications:

- 4 NCAs provided a list of specific competences, skills and knowledge tested. 1 NCA noted that the competencies and the skills assessed depend on the type of qualification,
- 4 NCAs stated that a test/exam is envisaged,
- 2 NCA stated that a test/exam is not mandatory and not always organised.».

According to our research, there are several EU Member States in which no criteria have been defined or their definition have been left to firms (e.g., France, Hungary, Estonia). Some of them, however, require passing a final examination to have the learning outcomes assessed (e.g., Czech Republic, Netherlands). Moreover, in **Czech Republic** questions of this final examination are prepared by the Czech National Bank (CNB) and included in a central database

for all accredited bodies and institutions⁶⁹. CNB has also issued detailed rules for bodies and institutions to be granted accreditation by the CNB to organise expert examinations⁷⁰. The same requirement is included in the scope of IDD⁷¹.

In **Austria**, staff shall acquire knowledge and competence by completing **training courses** and shall prove to have achieved the required knowledge and competence by means of **documentation confirming to have passed an exam** on that content⁷². However, the implementation rules are slightly vague, and do not stipulate the relevant characteristics of training courses, neither if it is compulsory a separation between trainer and evaluator. FMA Circular also includes a sort of grandfathering rule for staff providing relevant services at the time of ESMA Guidelines entered into force, so that firms have discretion to evaluate (and document) their fulfilment of knowledge and competence requirements by means of **recognising previous qualifications** or «arrange where applicable that a lack of knowledge may be caught up»⁷³.

Likewise, **Hungary**'s regime requires that relevant services providers define a special training program for the acquisition of professional skills and competences defined by the Central Bank of Hungary (MNB). The training program must contain three modules: general knowledge defined by MNB, sound knowledge of changes in legislation and of products and services and knowledge required for the recommendation of financial instruments and services and assessment skills⁷⁴. However, as in the case of Austria, there are no specifications on the relevant characteristics of training courses, including the level of learning outcomes, neither on the separation or not between the trainer and the evaluator.

⁶⁹ See Section 14f of Act No. 256/2004 Sb., on Capital Market Business, as amended. Further details on the characteristics of the examinations are stated in Article 8 of Decree No. 319/2017 of 21 September 2017 on professional qualification for distribution on the capital market.

⁷⁰ See Sections 14c and 14f of Act No. 256/2004 Sb., on Capital Market Business, as amended, and Articles 4 to 7 of Decree No. 319/2017 of 21 September 2017 on professional qualification for distribution on the capital market.

⁷¹ See section 58 of Law dated July 26, 2018, on the distribution of insurance and reinsurance.

⁷² See §37 of 02/2017 FMA Circular on the Criteria for the Assessment of Knowledge and Competence of Investment Advisors and Persons providing Information about Investment Products (Article 55 WAG 2018).

⁷³ See § 38 of 02/2017 FMA Circular on the Criteria for the Assessment of Knowledge and Competence of Investment Advisors and Persons providing Information about Investment Products (Article 55 WAG 2018).

⁷⁴ See Section 5 of Decree No. 37/2017 (XII. 27.) MNB on the Requirements Relating to the Professional Qualifications and Competences Prescribed for Natural Persons Providing Investment Advice or Information to Clients on Financial Instruments, Investment Service Activities or Ancillary Services.

With respect to EU Member States in which some criteria have been defined, most of them admit both classroom and distance learning (e.g., Luxembourg⁷⁵, Poland, Portugal⁷⁶, Spain⁷⁷). Nevertheless, in cases which passing a final examination is required, it is usual that it must be on-site (e.g., Portugal⁷⁸). Generally, both internal and external training are admitted (e.g., Luxembourg, Poland, Portugal⁷⁹, Spain), and some of them expressly admit both internal or external evaluation and certification (e.g., Portugal⁸⁰).

For instance, **Luxembourg's** regime accepts that firms may either assess the minimum knowledge and competence themselves **internally** according to a **formalised procedure verified** by the Luxembourg's Financial Sector Supervisory Commission (CSSF); or ensure that staff providing relevant services participate in **external training programmes certified** by CSSF⁸¹. Moreover, training organisations included in CSSF's list must be able to offer professionals flexibility so that they may use external training for only part of the topics, the rest being covered by internal training⁸². The regime **does not expressly require the separation between the trainer and the evaluator**, and the organisation of a test validating the acquisition of minimum knowledge is not mandatory for training organisations⁸³.

In relation to training duration, EU Member States establish different number of hours for the training requested for providing advice (e.g., 150 hours in Spain, 130 hours in Portugal) and for giving information (e.g., 80 hours in Spain and Portugal⁸⁴). In the case of **Luxembourg's** regime, it establishes that **external training** must have a total duration of **at least 60 hours**, without **differentiating between** the training for providing **advice** and for giving **information**⁸⁵.

⁷⁵ See § 2 of Circular CSSF 17/670 of 13 October 2017.

⁷⁶ See Article 2.5 of Regulamento da CMVM n.º 3/2018.

⁷⁷ See §19 of Guía Técnica 4/2017 de la Comisión Nacional del Mercado de Valores, para la evaluación de los conocimientos y competencias del personal que informa y que asesora, de 27 de junio de 2017.

⁷⁸ See Article 2.6 of Regulamento da CMVM n.º 3/2018.

⁷⁹ See Article 2.5 of Regulamento da CMVM n.º 3/2018.

⁸⁰ See Article 2.6 of Regulamento da CMVM n.º 3/2018.

⁸¹ See § 6 of Circular CSSF 17/665 of 31 July 2017.

⁸² See § 1 of Circular CSSF 17/670 of 13 October 2017.

⁸³ See § 2 of Circular CSSF 17/670 of 13 October 2017.

⁸⁴ Both Portugal and Spain admit that firms could establish less hours in a proportionate manner considering the nature and complexity of the activities developed, and under the firm's responsibility. See, in Portugal, Articles 2.2 and 2.4 of the Regulamento da CMVM n.º 3/2018; and, in Spain, § 19 of Guía Técnica 4/2017 de la Comisión Nacional del Mercado de Valores, para la evaluación de los conocimientos y competencias del personal que informa y que asesora, de 27 de junio de 2017.

⁸⁵ See § 2 of Circular CSSF 17/670 of 13 October 2017.

According to the assessment conducted, **only Ireland demands external training**. Staff providing relevant services must have a recognised qualification (included in the list provided in Appendix 4 of the Central Bank's Minimum Competency Code) developed by professional educational bodies, which should include competencies set out in Appendix 3 of the Minimum Competency Code and competencies set out, respectively, in ESMA Guidelines or in Appendix I of IDD. However, Ireland's regime **does not include provisions on specific characteristics** that recognised qualifications must meet in terms of type of training, requirement of exams, or separation between trainer and evaluator⁸⁶.

In this same line, **United Kingdom's** regime recognises that firms can decide which methods to use when assessing employee competence, considering that firms must not assess an employee as competent until having demonstrated the necessary competence and having attained an **appropriate qualification**, if required (depending on the activity provided)⁸⁷. In this case, firms should select a qualification from the provided **list**⁸⁸ considering appropriate for each regulated activity⁸⁹. **This general regime has been amended to meet ESMA Guidelines** so, in addition, staff providing relevant services must demonstrate to **possess knowledge and competence**⁹⁰ by having appropriate experience and having attained an **appropriate qualification that meets the criteria stated in ESMA Guidelines**⁹¹.

In conclusion, the **lack of use of European qualifications standards** for defining what a qualification is and for specifying its quality assurance and the level and intensity of the knowledge and competence required in ESMA Guidelines **might be leading to a divergent implementation of MiFID II knowledge and competence requirements**.

⁸⁶ See Central Bank of Ireland's Minimum Competency Code 2017, Part 2, p. 18, and Part 3, p. 21.

⁸⁷ See FCA's TC 2.1.1R.

⁸⁸ See FCA's TC Appendix 4. Besides, FCA's TC sets criteria for assessment of qualification providers and for qualifications to be included in the list. Among the criteria for assessing a qualification provider, FCA's TC includes «a clear separation of function between its qualification services and any other services it performs», «robust and credible procedures for assessing a candidate demonstration of the learning outcomes specified in the relevant examination standards» and «robust procedures for the setting of assessments and marking of results» (see FCA's TC Appendix 5.1.1G, § 3). In relation to the information about the qualification to be provided to FCA when asking to add the qualification to the list of appropriate qualifications, FCA may ask the qualification provider, among other issues, to provide «the learning materials» and «details of expected learning hours or any other similar arrangements» (see FCA's TC Appendix 5.1.1G, § 4). Consequently, there is not an express separation between trainer and evaluator in United Kingdom's regime. Notwithstanding, firms must obtain from an accredited body independent verification (a statement of professional standing) of the firm's compliance with the requirement that retail investment advisers attain each module of appropriate qualification (see FCA's TC 2.1.27R.). A list of accredited bodies recognised by FCA is provided in the Glossary included in FCA's Handbook (see FCA's TC 2.1.30), and guidance on accredited bodies is available in FCA's TC Appendix 6.

⁸⁹ See FCA's TC Appendix 1.

⁹⁰ See SYSC 5.1.5ABR.

⁹¹ See FCA's TC 4.1.4R.

With respect to the transposition of IDD requirements on knowledge and competence, according to the data of the EC Report:

«An overarching majority of NCAs responded that their respective Member States requires an assessment of knowledge and competences before taking up the profession.

Two NCAs answered negatively to this question.

10 Member States have mostly an examination procedure.

8 Member States have a combination of exams, designations, trainings or an alternative depending on the conditions provided in their national legislation.

1 Member State conducts a questionnaire.

2 NCAs stated that the conformity of qualifications is checked by assessing documents provided.»

Besides, according to the EC Report:

«The majority of Member States (14) do not have higher requirements for access to the profession than for continuous training under IDD.

Only 6 NCAs indicated that their Member States have higher requirements for access to the profession.»

Additionally, the EIOPA Report on the application of the IDD⁹² states:

«According to the responses, the following Member States have noted that they have mostly examination procedures (HR, IT, HU, LU, CZ, PL, SE, BE, FI, DE, EL).

The following Member States have the combination of exams, designations, trainings, only trainings or an alternative depending on the conditions provided in their national legislation (IE, BG, IT, FR, PT, ES, LI, SK, SI). LT and LV stated that the conformity of qualifications is checked by assessing documents.»

«Member States noted that the assessment of knowledge and competences is ran by educational/accredited bodies, universities, trade associations, banking institutes, insurance institutes, insurers, intermediaries (IE, in some cases also IT according to the category of distributor, PL, CZ, SE, ES, EL, LV, in some cases SK, SI, LT).

In BE, the assessment is run by professional associations accredited by FSMA and in compliance with regulations.

In PT and LU, there are technical committees composed by members appointed by the public bodies and trade associations.

⁹² See EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: Annexes I-VIII to the Report on the application of the Insurance Distribution Directive (IDD), EIOPA-BoS-21/582, 6 January 2022, p. 16.

PL noted that this is contingent on the type of exam and distributor, public body, insurance undertakings, committees and supervisory authority.

In ten Member States, those bodies are public bodies/ supervisory authorities (MT, HR, LI, SK, FI, DE, EL, IT for some categories of distributor, FR, HU).»

«Nine Member States replied positively (IE, BG, PT, CZ, ES, LV, BE, SK, SI) [*Q5(c) If the body assessing the knowledge and competence is another body than a public body (e.g. trade associations, insurance associations, private bodies), please indicate if there is any accreditation procedure for these bodies?*]. Six Member States replied negatively (PL, IT11, MT, SE, LI, LT).»

«Eight Member States indicated that those bodies [assessing the knowledge and competence] are supervisory authorities/public bodies (IE, BG, PT, CZ, ES, LV, BE, SK).

In SI, the trade association is competent to provide training according to the Slovenian Insurance Act.»

In relation to the assessment conducted to verify the knowledge and competence, the EIOPA Report on the application of the IDD⁹³ states:

«The following Member States provided a mixed approach, both training and exams: IE, BG, IT, ES, SK.

Member States stated that there are exams organised in order to be able to access the profession - HR, HU, LU, CZ, PL, SE, LV, BE, SI, FI, DE, EL, LT.

In LI and MT, the assessment is not conducted by MFSA/FMA, there is only an assessment of the documentation proving knowledge and ability.»

«Several Member States indicated that there could be both means of examination acceptable (in person and through distance means of communication). These MS are BG, HR, IT, PT, CZ, PL, ES, LI, BE, FI, LT.

Some of the Member States emphasised that it should be in person (HU, LU, LV, SI, DE, EL).

SE stated that the exam should be conducted online at a supervised location provided by the private bodies.»

«More than a half Member States noted that it has some kind of certification or verification, mostly digital but also paper-based in some cases. Member States that indicated the possibility of issuing certificate/other proof (IE, BG, IT, HU, PT, CZ, PL, SE, LV, BE, SK, SI, FI, DE, EL, LT).

In HR, an exam is a condition for registration according to Article 3 of the IDD and everyone can extract the proof from the public, digital register. LU also emphasised that registration in a database is the proof.

The proof of a successful assessment in MT is the acceptance by the Authority of the persons' request to provide advice.»

⁹³ See EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: Annexes I-VIII to the Report on the application of the Insurance Distribution Directive (IDD), EIOPA-BoS-21/582, 6 January 2022, p. 17.

As for the establishment of a minimum number of training hours required as a condition for the achievement of the appropriate qualification, the EIOPA Report on the application of the IDD⁹⁴ states:

« IE and BE stated that this varies on the qualifications and sometimes depending on the degree (for example, university degree) or practical experience.

Member States which answered negatively: BG, HR, LU, CZ, PL, MT, SE, LI, LV, SI, FI, DE, EL, LT

Member States which responded positively: IT, FR, HU, PT, ES, SK.

It has to be taken into account that those MS which have introduced only an exam as a requirement for taking up the profession do not have training requirements in their national frameworks.»

In view of the above, it is advisable to have a **taxonomy of qualification requirements**. As the sustainable finance regulation is based on a taxonomy, knowledge and competence regulation should be based on a clear and common definition of key concepts such as ‘knowledge’, ‘competence’, ‘qualification’, ‘training’ or ‘learning outcomes’.

5.- CRITERIA TO BE MET BY CONTINUOUS PROFESSIONAL DEVELOPMENT (CPD)

ESMA Guidelines stipulate (§ 20.b) that firms should be able to ensure that staff maintain and update their knowledge and competence by undertaking continuous professional development or training for the appropriate qualification as well as specific training of any new investment products offered by the firm.

The study addresses which are the characteristics that continuous professional development (hereinafter, CPD) or training must meet, i.e., classroom learning or distance learning; training borne by the firm (internal) or by an external body (external); and number of class hours for providing advice and for giving information (training duration).

According to the data of the EC Report:

«5 NCAs stated that, in their jurisdiction, there are no specific continuing education requirements or practices used by a consistent number of market player for staff giving advice.

20 NCAs replied that these requirements or practices exist in their jurisdiction, while one NCA did not reply.

Among the NCAs that replied positively:

- 1 NCA clarified that the continuity of the education requirements is considered to be ensured by the (national) provisions requiring the renewal of the certificates.

⁹⁴ See EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: Annexes I-VIII to the Report on the application of the Insurance Distribution Directive (IDD), EIOPA-BoS-21/582, 6 January 2022, p. 18.

- 1 NCA stated that each firm has the responsibility to verify that the diplomas presented by the staff members are updated whenever necessary, i.e. for example when the person concerned exercises new functions or changes department. Moreover, the entity should list the continuing education followed by staff members.».

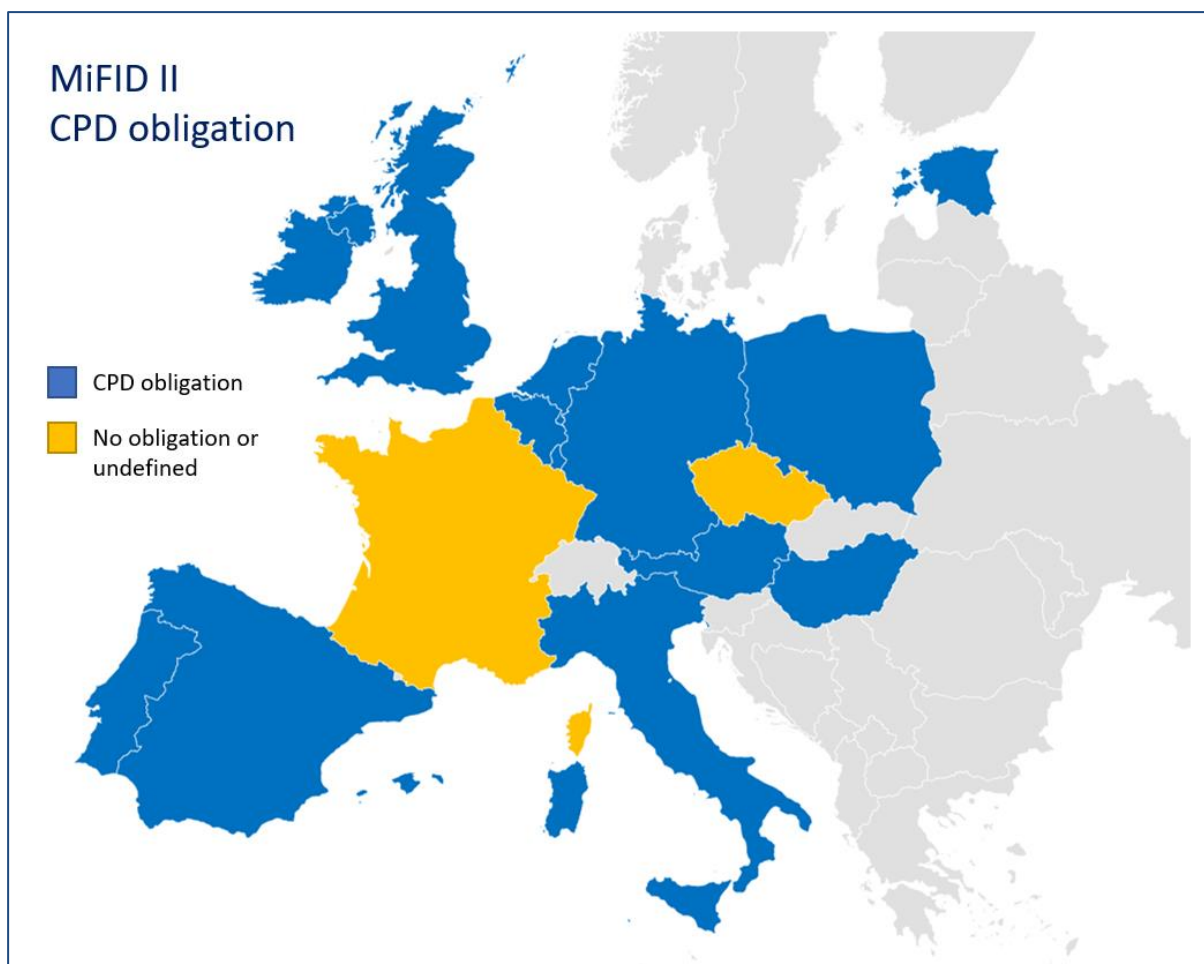


Figure 1: MiFID II CPD obligation (see Annex V)

Several EU Member States within the scope of our study admit both internal or external, and classroom or distance CPD training (e.g., Spain⁹⁵), and some of them require passing examinations from time to time (e.g., Netherlands). Moreover, **huge divergences have been found in the CPD training duration**. For instance, 15 hours per year of CPD are required in Austria⁹⁶ and Ireland⁹⁷; and 30 hours and 20 hours per year (for providing advice and giving

⁹⁵ See §19 of Guía Técnica 4/2017 de la Comisión Nacional del Mercado de Valores, para la evaluación de los conocimientos y competencias del personal que informa y que asesora, de 27 de junio de 2017.

⁹⁶ See § 42 of 02/2017 FMA Circular on the Criteria for the Assessment of Knowledge and Competence of Investment Advisors and Persons providing Information about Investment Products (Article 55 WAG 2018).

⁹⁷ See Central Bank of Ireland's Minimum Competency Code 2017, Part 2, p. 18.

information, respectively) are required in Portugal⁹⁸ and Spain⁹⁹. Moreover, certain EU Member States only include the general requirement of CPD as stated in ESMA Guidelines (§ 20.b), without further detail (e.g., Luxembourg, Poland), and others (e.g., Czech Republic) do not expressly require any CPD at all.

Ireland's regime stipulates that those qualifications aiming to be recognised and listed (Appendix 4 of the Central Bank's Minimum Competency Code) should include ongoing CPD requirements¹⁰⁰, both in MiFID II and IDD scope. **Staff holder of a recognised qualification which was not required to fulfil CPD requirements** shall complete the established 15 hours per year of CPD with effect from 1 January 2012¹⁰¹, either by participating in a CPD scheme operated by an external professional educational body that provides a recognised qualification or by arranging their own CPD hours. Otherwise, CPD hours¹⁰² may be obtained by attending courses, seminars, conferences, lectures, workshops, or certified completion of e-learning tutorials, and that they must be accredited by the provider of a recognised qualification or a professional educational body providing recognised qualifications that have a CPD requirement¹⁰³.

In the case of **United Kingdom**, CPD is only required to 'retail investment advisers' (as defined in the Glossary included in FCA's Handbook), establishing a minimum of 35 hours each 12-month period¹⁰⁴.

Considering the foregoing, implementation of ESMA Guidelines requirement on **CPD** by EU Member States shows a **wide disparity that could make its revision advisable**.

⁹⁸ See Article 2.3 of Regulamento da CMVM n° 3/2018.

⁹⁹ See §19 of Guía Técnica 4/2017 de la Comisión Nacional del Mercado de Valores, para la evaluación de los conocimientos y competencias del personal que informa y que asesora, de 27 de junio de 2017.

¹⁰⁰ See Central Bank of Ireland's Minimum Competency Code 2017, Part 3, p. 21.

¹⁰¹ See Central Bank of Ireland's Minimum Competency Code 2017, Part 1, p. 13.

¹⁰² With a maximum of eight hours a day, a maximum of 4 hours for any single topic in any day (see Central Bank of Ireland's Minimum Competency Code 2017, Part 1, p. 14).

¹⁰³ See Central Bank of Ireland's Minimum Competency Code 2017, Part 1, p. 14.

¹⁰⁴ See FCA's TC 2.1.15R. Required CPD shall be fulfilled by attaining structured CPD activities, such as participating in courses, seminars, lectures, conferences, workshops, web-based seminars or e-learning which require a contribution of no less than 30 minutes; or unstructured CPD activities, such as conducting research relevant to the individual's role, reading relevant material, or participating in coaching or mentoring sessions (see FCA's TC 2.1.20G and 2.1.21G). However, retail investment advisers should complete no less than 21 hours of structured CPD activities (see FCA's TC 2.1.16G). In any case, all CPD should be measurable and capable of being independently verified by an accredited body [see FCA's TC 2.1.22G (6)]. Moreover, firms must ensure that advisers annually issue a written declaration that they complied with APER or COCON (as applicable) and with CPD requirements in the preceding 12 months (see FCA's TC 2.1.26R); and must obtain from an accredited body independent verification (a statement of professional standing) of the firm's compliance with CPD and annual declarations requirements (see FCA's TC 2.1.27R).

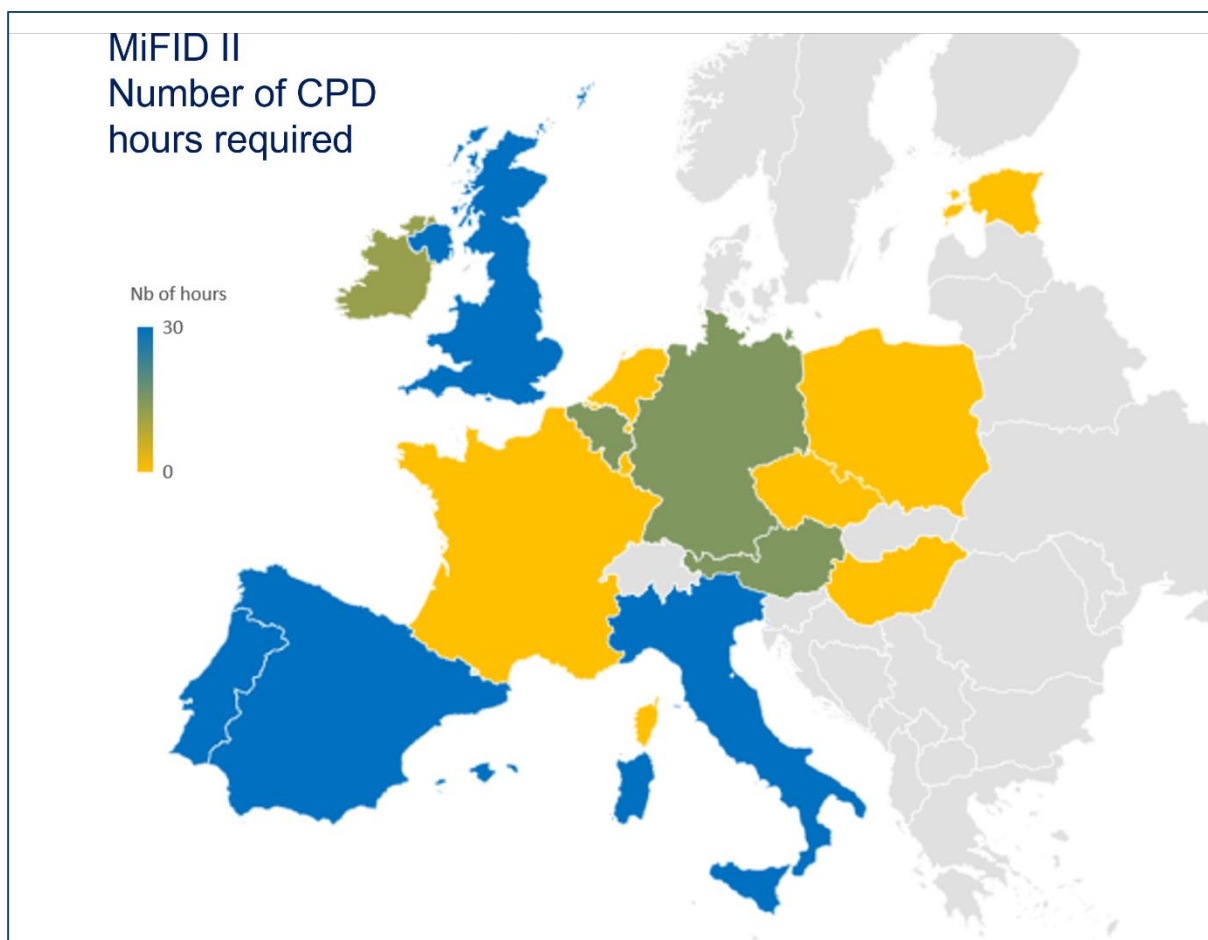


Figure 2: MiFID II Number of CPD hours required (see Annex V)

Regarding the transposition of IDD requirements on knowledge and competence, according to the data of the EC Report:

«Only 4 Member States provided positive response or noted that it could depend on the program or/and the provider.

Other Member States either responded negatively or did not provide a specific response to this question.»



Figure 3: IDD CPD obligation (see Annex V)

In relation to which body provides training for CPD (e.g., public body, trade association, private body etc.), the EIOPA Report on the application of the IDD¹⁰⁵ adds:

«IE, PT and CZ noted that they have accredited/professional/educational bodies.

In DK passing an exam is considered CPD. In PL training might be provided with any entity or person with relevant professional or educational experience.

Insurance/reinsurance undertakings, intermediaries, trade associations and accredited/educational bodies, universities or combination thereof are training bodies in many Member States (BG, HR, IT, EE, FR, HU, LU, MT, SE, LI, LV, BE, SI, FI, DE, LT, ES, EL). »

¹⁰⁵ See EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: Annexes I-VIII to the Report on the application of the Insurance Distribution Directive (IDD), EIOPA-BoS-21/582, 6 January 2022, p. 19.

«In IE, CPD must be accredited by one of the professional educational bodies. If the modules are provided by another entity, it has to be confirmed by these accredited bodies.

In DK, there are only exams, and if the provider of the exams wants to be approved, the FSA approves it according to some conditions.

In some Member States, public bodies/supervisory authorities conduct an accreditation procedure and this procedure is established at national level (HR, PT, CZ, BE, EL, ES).

Member States which answered negatively: (BG, EE, FR, HU, LU, PL, MT, SE, LI, LV, SI, FI, DE, LT, IT). »

« Member States which indicated that the supervisory authority or a public body conducts an accreditation procedure, are: IE, DK, HR, PT, CZ, LI, BE, SK, EL, ES.

For example, DK indicated that there is no renewal procedure.

HR, CZ, EL indicated that there should be a type of renewal procedure.

Please note that IE provided with this regard a useful and notable response. See “Detailed Compendia” for more details. »

Most of the assessed transposition rules have included the requirement that CPD has a duration of 15 hours per year, according to IDD (i.e., Austria, Czech Republic, Hungary, Luxembourg). In Spain, this minimum requirement applies for information activities, while 25 hours per year of CPD are required for providing advice. In some Member States, CPD is certified (e.g., Czech Republic).

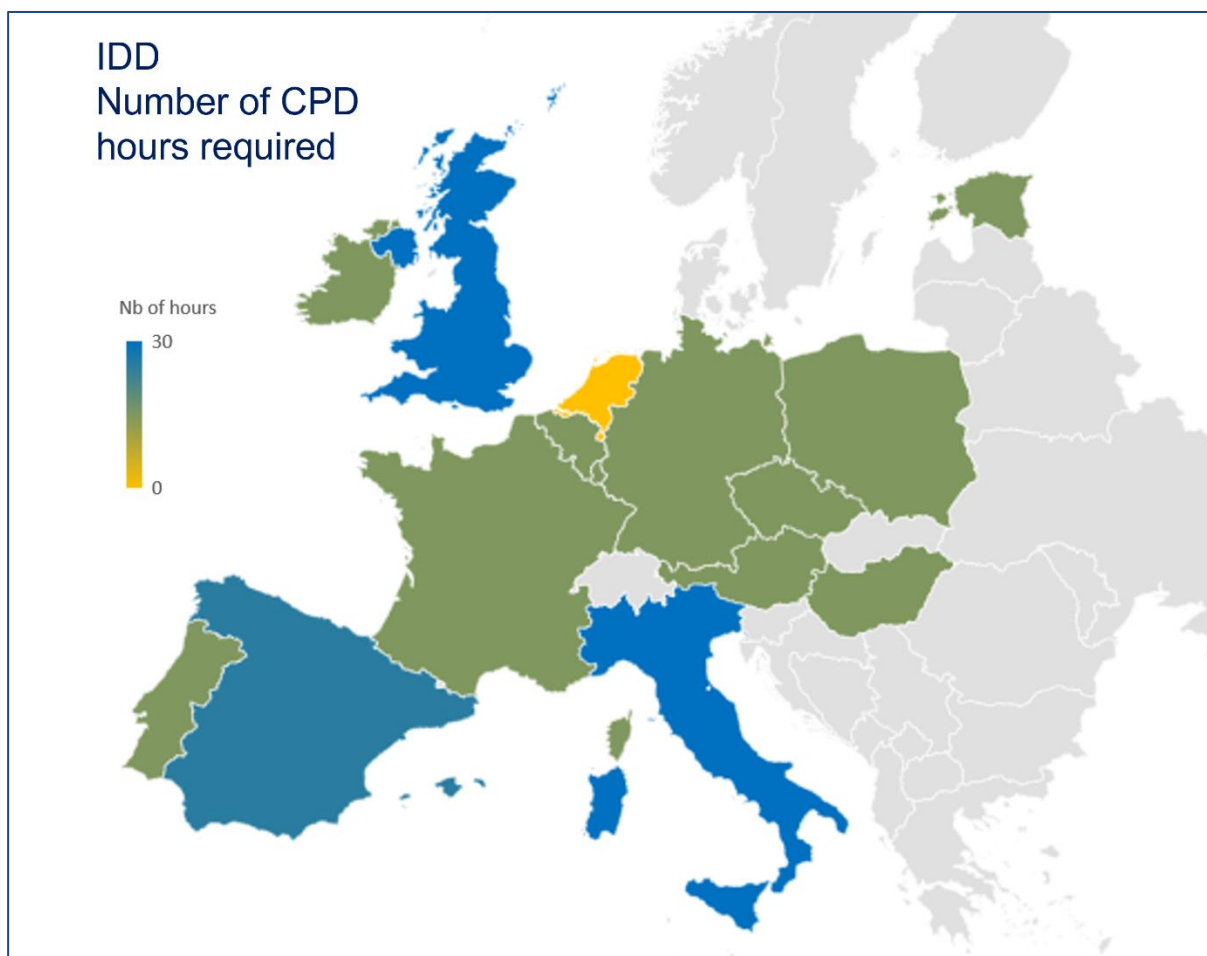


Figure 4: IDD Number of CPD hours required (see Annex V)

To achieve the objective of maintaining the qualification over time, **we conclude that it may be advisable that CPD would be certified**¹⁰⁶.

6.- PERIOD REQUIRED TO GAIN APPROPRIATE EXPERIENCE AND MAXIMUM PERIOD TO WORK UNDER SUPERVISION

ESMA Guidelines state that staff must be assessed through having gained appropriate experience (§ 20.a), which means having «successfully demonstrated the ability to provide advice or to give information through previous work performed, on a full time equivalent basis, for a minimum period of 6 months» (§ 4.h); and that staff who has not acquired the necessary

¹⁰⁶ In this respect, recital 22 of the first draft of the RIS, leaked on 8 May 2023, says: « [...] To this end, a minimum number of hours per year of professional training and development to be undertaken by natural persons giving investment advice should be laid down and its successful completion be proven by a certificate.» (see EU Retail Investment Strategy: Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and 2016/97/EU of the European Parliament and of the Council as regards the strengthening of Union retail investor protection rules, Brussels, XXX, RIS/2002/1, [...] (2023) XXX draft).

knowledge and competence can only provide the relevant services under supervision (§ 20.d) for a maximum period of 4 years except where a shorter period is determined by the NCA (§ 4.j). Moreover, according to ESMA Guidelines, NCAs should publish information (i) on the minimum period required to gain appropriate experience (§ 22.i) or establish a period beyond this minimum differentiating the experience required depending on the appropriate qualification attained by staff and on the services being provided (§ 4.h); (ii) and on the maximum period of time under which a staff member lacking appropriate qualification or appropriate experience is allowed to work under supervision (§ 22.ii).

By establishing this requisite, ESMA Guidelines demand a ‘professional development’, so that it is not sufficient to ‘know’ (‘knowledge’) and ‘learn how to do’ (‘competence’), but it is also required to ‘have done’ (‘experience’). This notion is also present in Article 10.2 of IDD.

Therefore, we have reviewed which is the period required to gain appropriate experience and which is the maximum period under which a staff member lacking appropriate qualification or appropriate experience can work under supervision.

According to the data of the EC Report:

«The majority of NCAs (13) reported that a 6-month period is needed to gain the appropriate experience.

4 NCAs indicated 1 year.

2 NCAs stated that it depends on the type of instruments advised:

- 1 NCA indicated 18 months for sovereign bonds and non-complex instruments and 24 months for other products,
- 1 NCA indicated 1 year for non-complex instruments and 3 years for complex ones.

1 NCA requires a minimum period of 6 months of experience if the candidate holds a university degree and 7 year if the candidates holds a secondary education diploma or certificate.

1 NCA stated that the period of time for gaining the appropriate experience varies on the basis of the qualification held by the candidate (and it is inversely proportionate to the qualification held).

1 NCA requires 10 years of experience.

1 NCA reported that the NCA considers the combination of the existence of a pre-existing qualification and completion of the additional 26-hour training (mandatory for the new entry) as appropriate experience.».

Most of the EU Member States of which we have obtained information **have adopted the minimum professional experience required by ESMA** (6 months). However, it is worth noting that **Luxembourg** has risen the minimum required to **12 months**¹⁰⁷. On the other hand,

¹⁰⁷ See § 5 of Circular CSSF 17/665 of 31 July 2017.

there are certain EU Member States (e.g., Czech Republic) that do not expressly require any experience at all.

In **Ireland**, shall successfully demonstrate the ability to perform the relevant service through previous work, on a full-time equivalent basis, for a minimum period of 6 months¹⁰⁸. Similarly, **United Kingdom**, FCA has amended its TC so that a firm must not assess an individual as competent unless he or she has obtained appropriate experience through previous work performed, on a full-time equivalent basis, for a minimum period of 6 months¹⁰⁹.

In relation to the maximum period under which a staff member is allowed to work under supervision, the EC Report states:

«13 NCAs replied that the maximum period of time under which a staff member lacking appropriate qualification or appropriate experience is allowed to work under supervision is four years, as stated in the ESMA guidelines.

Other NCAs reported the following maximum period of time:

- 3 NCAs do not allow staff member to work under supervision,
- 2 NCAs reported a 6-month period,
- 2 NCAs established a 1-year limit (in one of which in particular is required only to gain the appropriate theoretical knowledge whereas a 6 month-period applies to gain the required experience),
- 4 NCAs allow for 2 years,
- 1 NCA allows for 3 years if the advice is in connection with complex instruments and 1 year if in connection with non-complex instruments.».

Likewise, **most of the assessed EU Member States** have maintained the **4 years** provided in ESMA Guidelines as the maximum period under which a staff member lacking appropriate qualification or appropriate experience can work under supervision.

In **United Kingdom**, FCA has amended the prohibition according to which an employee must not carry on an activity without appropriate supervision by specifying that he or she must not provide the activities under supervision for a period exceeding 48 months¹¹⁰.

However, **some EU Member States have cut down the period of supervision**, as in the case of **Austria**¹¹¹, where the maximum period of supervision is **2 years**, although it is only referred to staff who do not possess the appropriate *experience* (no mention is made of appropriate

¹⁰⁸ See Central Bank of Ireland's Minimum Competency Code 2017, Part 2, p. 18.

¹⁰⁹ See FCA's TC 4.1.4R in relation to amendment of TC 2.1.1R (1).

¹¹⁰ See FCA's TC 4.1.4R in relation to amendment of TC 2.1.2R.

¹¹¹ See § 41 of 02/2017 FMA Circular on the Criteria for the Assessment of Knowledge and Competence of Investment Advisors and Persons providing Information about Investment Products (Article 55 WAG 2018).

knowledge); **Hungary**¹¹², where the maximum period is **1 year**; or **France**¹¹³, where the maximum period is especially short: **6 months**.

On the other hand, IDD does not include any provision regarding a period required to gain appropriate experience and a maximum period to work under supervision. For this reason, most of the analysed IDD transposition rules do not include provisions of this kind; apart from Ireland, where the same knowledge and competence regulation is applicable both to MiFID II and IDD scope.

In view of the above, it could be advisable to **analyse the consequences** of EU Member States establishing standards on required experience and maximum period for working under supervision more demanding than the benchmark stated in ESMA Guidelines, as **more rigorous approaches**, although welcomed, could entail difficulties in both firms' and staff 's eventual relocation.

7.- INTERNAL OR EXTERNAL REVIEW OF APPROPRIATE QUALIFICATION

Finally, ESMA Guidelines require that firms should carry out an internal or external review, on at least an annual basis, so that it is ensured that staff possesses an appropriate qualification and maintain and update their knowledge and competence (§ 20.b); and that NCAs should determine whether the review of staff's qualification should be carried out by the firm or an external body (§ 22.iii).

Therefore, the study considers whether the review of staff member's appropriate qualification should be carried out by the firm (internally) or by an external body (externally).

According to the EC Report, «8 NCAs rely on an assessment made by the firm. However, some of them (5) offer also the possibility to demonstrate the appropriate qualification through recognised qualifications (3 NCAs) or through an exam (organised, directly or indirectly, by the NCA – 2 NCAs).».

According to our research, most EU Member States of which we have data admit both internal and external review of staff member's appropriate qualification (e.g., Austria¹¹⁴, Estonia,

¹¹² See Section 9 (2) of Decree No. 37/2017 (XII. 27.) MNB on the Requirements Relating to the Professional Qualifications and Competences Prescribed for Natural Persons Providing Investment Advice or Information to Clients on Financial Instruments, Investment Service Activities or Ancillary Services.

¹¹³ See Position – recommandation AMF L'évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018, Section 2.2, p. 5.

¹¹⁴ See § 43 of 02/2017 FMA Circular on the Criteria for the Assessment of Knowledge and Competence of Investment Advisors and Persons providing Information about Investment Products (Article 55 WAG 2018).

France¹¹⁵, Hungary¹¹⁶, Luxembourg¹¹⁷, Spain¹¹⁸). That is the case also in United Kingdom¹¹⁹. However, while several EU Member States require only internal review (e.g., Ireland¹²⁰), **none of them leave the revision only to external bodies and some of them expressly forbid this option** (e.g., France). In all cases, according to ESMA Guidelines, firms are ultimate responsible of its staff's appropriate qualification.

Consequently, EU Member States approach to the requirement on review of staff member's appropriate qualification should be assessed, as **external review of staff's qualification might be advisable**, without prejudice of firm's ultimate responsibility.

¹¹⁵ See Position – recommandation AMF L'évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018, Section 2.2, p. 5.

¹¹⁶ Hungary's regime requires checking of staff's general knowledge at least every 5 years, and staff's special knowledge at least annually. See Section 8 of Decree No. 37/2017 (XII. 27.) MNB on the Requirements Relating to the Professional Qualifications and Competences Prescribed for Natural Persons Providing Investment Advice or Information to Clients on Financial Instruments, Investment Service Activities or Ancillary Services.

¹¹⁷ See § 6 of Circular CSSF 17/665 of 31 July 2017.

¹¹⁸ See §12 of Guía Técnica 4/2017 de la Comisión Nacional del Mercado de Valores, para la evaluación de los conocimientos y competencias del personal que informa y que asesora, de 27 de junio de 2017.

¹¹⁹ See FCA's Policy Statement PS17/14, July 2017, p. 117.

¹²⁰ See S.I. No. 391/2017 - Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017, § 13.

NEW PROPOSALS: PASSPORTING OF QUALIFICATIONS AND PAN-EUROPEAN CERTIFICATION LABEL FOR FINANCIAL ADVISORS

PASSPORTING OF QUALIFICATIONS

Divergences between Member States on tax and legal regulations require that all European qualifications be adapted in each receptor State. Consequently, passporting of qualifications with added CPD requirements to fill the gaps on national divergences would be a sound model.

According to the EC Report:

«Almost all NCAs (22) declared that certificates/qualifications from other Member States are accepted.

Nevertheless, the following additional requirements/conditions apply:

- 1 NCA indicated that the foreign certification is accepted if it is considered equivalent under the national legislation.
- 1 NCA indicated that the holder of a foreign certification has to: (1) demonstrate they are fit & proper and (2) pass a test on the national capital market legislation.
- 1 NCA indicated that similarly, qualifications shall comply with the national arrangements on the appropriate qualification.
- 1 NCA indicated that the holder of a foreign qualification shall be subject to an assessment by the person in charge of the control of the knowledge and competence of staff within the firm.
- 1 NCA indicated that the assessment of the appropriateness of the foreign certificate has to be made by the firm that can however rely on the opinion of an external institute.
- 1 NCA indicated that the appropriateness of the foreign qualification is assessed by the NCA on a case-by-case basis and, where needed, the holder of the qualification may be asked to sit a competency test or complete an internship.
- 1 NCA indicated that foreign qualifications are admitted as long as they belong to a list made by the NCA.
- 1 NCA indicated that an automatic equivalence is established for the Level III CFA, while the other foreign qualifications are subject to the opinion of the national body responsible for the examination of candidates.

3 NCAs do not admit qualifications issued in other Member State as proof of the appropriate qualification.»

With respect with the transposition of IDD requirements on knowledge and competence, according to the EC Report:

«12 Member States do not accept certifications/qualifications issued by other Member States.

10 Member States, on the contrary, accept certifications/qualifications issued by other Member States.

Those Member States, which admit certifications of other Member States in addition indicated:

- The respective bodies (QFA Board and The Insurance Institute of Ireland) publish comprehensive schedules of exemptions from their examinations which cover various qualifications available in Ireland, UK and other international qualifications,
- In 3 MS, the recognition of certificates from other Member States is laid out in national law,
- In case of an education/university degree, a public body has to deliver a comparability attestation (4 Member States),
- Assessment is conducted on a case-by-case basis (1 Member State). »

In relation to the admissibility of CPD certificates or qualifications, the EC Report states:

«Only 6 Member States responded positively.

Other Member State either responded negatively or did not provide a specific response to this question.»

The EIOPA Report on the application of the IDD¹²¹ adds:

«Member States which responded positively [to the question: ‘Is successfully completed training/qualification/certification from other Member States recognised as proof of compliance in your jurisdiction as a home Member State?’]: IE, HR, IT, PT, LU, CZ, ES, LI, DE, LT, FR, BE, HU.

Member States which responded negatively: DK, BG, EE, PL, SE, LV, SK, SI, FI, EL, MT.

Those Member States which provided a positive response, indicated, for example:

- that QFA Board and The Insurance Institute of Ireland have published comprehensive schedules of exemptions from their examinations which cover various qualifications available in Ireland, UK and other international qualifications (IE),
- that this is introduced and recognised by the national law (HR, PT, LI),
- if the condition is a graduation, acknowledged education or university degree, a public body has to deliver a comparability attestation (BE, HU, CZ, DE),
- assessment on a case-by-case basis (LU).
- that, where the applicant for the registration as an agent or broker declares to have moved its habitual residence to Italy after having been registered in another Member State, IVASS asks for a confirmation of the previous registration directly to the competent Authority of that Member State (IT).»

The truth is that, even if NCAs express that most of Member States accept certificates from other Member States, the passporting of qualifications is conditioned to the compliance of

¹²¹ See EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: Annexes I-VIII to the Report on the application of the Insurance Distribution Directive (IDD), EIOPA-BoS-21/582, 6 January 2022, pp. 18-19.

additional requirements. In practice, in most cases migration involves newly start the certification process.

It would be advisable to create European standards based on European framework, with a client centric point of view in the framework of the RIS. This means that a European standard of a qualification should support the professional work of an advisor with the client (client-centred approach), as opposed to other standards with products at the centre of the qualification requirements (product-centred approach, e.g., CFA).

PAN-EUROPEAN LABEL FOR ADVISORS

The EC Report shows a certain scepticism about the feasibility of creating a pan-European certification label for financial advisors, even if it is voluntary and coexists with national certifications. The reasons are budgetary and workload. According to the EC Report, the creation and maintenance of such a label by the European Financial Authorities would be associated with high ongoing administrative costs borne by the EU budget. In addition, it is said that it would also entail high administrative costs for NCAs, which would have to manage its coexistence with existing national labels.

According to the KANTAR Report:

«Given the rather positive assessment of the situation on advisors' qualifications, a label was not seen as a priority by the stakeholders across the board. The industry players expressed some worries over the potential additional red tape this could create, while at the same time noting the promotion of equalised standards of qualifications across the union and a potential marketing argument. The national authorities saw it as one of their prerogatives. Some consumer protection bodies also argued that this could further blur the line between independent and non-independent advisors and create confusion. [...] The EU-label for financial advisors is generally perceived as positive by the stakeholders as long as it meets objective criteria and is issued by an independent body. Consumer associations argue that, irrespective the qualifications, advisors should not act as salespeople, and this can only be avoided through the elimination of conflicts of interest in distribution networks. »¹²²

As can be seen from the responses to the public consultation on the RIS ¹²³, which asked about the reasons why a pan-European label should or should not be adopted, both arguments in favour and arguments against are recurrent among respondents. Besides, some arguments against the pan-EU label are in fact conditions for its adoption. The table below show the

¹²² ULIČNÁ, D., VINCZE, M., MOSOREANU, M., et al.: *Disclosure, inducements, and suitability rules for retail investors study: final report*, European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Publications Office of the European Union, 2023, p. 252.

¹²³ See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-EU-strategy-for-retail-investors/public-consultation_en (last consulted 18 April 2023).

different arguments posed by the respondents to the public consultation on the RIS (Question 8.8¹²⁴):

IN FAVOUR	AGAINST	CONDITIONING FACTORS
<ul style="list-style-type: none"> - It would recognize the top-class advisors. - It would incentive improving the quality of the services. - It would enhance trust and confidence. - It would make sure that best practices are share. - It would promote a high-quality standard. - It would ensure a level playing field among Member States. - It would raise sustainable finance literacy among finance professionals. - It would enhance harmonization of rules across different markets. - It would allow to recognize an equivalence between national certification systems. - It would promote high-level common standards across the EU. - It would help retail investors to identify and choose their advisor. - May be beneficial for the mobility of financial advisors 	<ul style="list-style-type: none"> - It is unnecessary. - It would be of difficult implementation. - It would be of costly implementation. - It would entail regulatory changes for the industry. - The definition of the regime would be challenging. - Would not necessarily lead to ensuring the quality of financial advice. - Sufficient training requirements already exist. - The design of the training system should remain a national task. - It would be disproportionate. - It would not be adapted to national markets specificities. - It would create more uncertainty than trust. - If it is only on a voluntary basis, it would not promote common knowledge and competence. - It would be a distortion of competition in favour of those 	<ul style="list-style-type: none"> - It should consider the local specificities (market, regulation, taxes, education systems etc.) - It should require proof of minimum levels of competence and professionalism. - It should include professional codes of conduct. - It should require proof of continuing professional development. - ESG training should be mandatory. - It should be based on an exam and/or diploma. - It should fit with existing frameworks and interact with local requirements. - It should be defined what entity manage the label. - It should insert a grandfathering mechanism to avoid regulatory burden. - The system should define criteria and standards that ensure the transnationality of the profession. - It should be managed by the professionals themselves.

¹²⁴ Question 8.8 of the public consultation on the RIS: «Would you see merit in developing a voluntary pan-EU label for financial advisors to promote high-level common standards across the EU? Yes/No/don't know Please explain your answer and indicate what would be the main advantages and disadvantages. If yes, what would you consider the essential characteristics of such a label and how should it be similar to or different from those that already exist in the market?».

IN FAVOUR	AGAINST	CONDITIONING FACTORS
	<p>large and financially strong providers.</p> <ul style="list-style-type: none"> - The current rules allow for the necessary flexibility. 	<ul style="list-style-type: none"> - It should encourage adherence to, and enhancement of high-level ethical practices and continuing professional development. - It should leave each country free to set higher standards. - It must be easy to understand and subject to certification. - Its framework must be linked to national certification systems. - High level would have to be guaranteed. - It should entail automatic recognition of the existing national qualifications. - It should be oriented towards protecting clients. - It would need a comprehensive description of its functioning. - It would have to be fully independent and supervised by Public Authorities.

Table 1.- Arguments posed by the respondents to the Question 8.8 of the RIS Public Consultation

On the other hand, most of the respondents of our questionnaire (*i.e.*, Austria, Estonia, France, Hungary, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, Spain, United Kingdom) have confirmed that they would be in favour of establishing a pan-European label for advisors. Among the arguments in favour, our respondents pointed out:

- It “lends credibility to our marks [sic]” (Austria)¹²⁵.

¹²⁵ However, the Austrian respondent pointed out that requirements should be sufficiently high so that Member States in which standards are higher –like Austria– may not suffer from sudden increase in competition.

- It would mean “quality, expertise and mutual recognition” at a European level, which “could have an interest and probably could find a market” among French advisors (France).
- It would strengthen EU market practices (Hungary).
- It would “help adopting a common standard and levelling the playing field in all the European countries” (Italy)¹²⁶.
- It would “create a common basis of mandatory knowledge for the advisor across Europe but also provide more visibility on the quality of the service provided for the final client” (Luxembourg).
- “It will drive up the quality of financial advice in general and create a competitive environment which could lead to a more level playing field” (Netherlands)
- It “can be implemented as a master label with fundamental criteria for individual designations to comply with” (Poland)¹²⁷.
- It would “ensure that all advisors meet the same standards and requirements across Europe, which could increase consumer trust in the industry”; and it would “facilitate cross-border business and make it easier for advisors to operate in different EU countries” (United Kingdom)¹²⁸.

¹²⁶ The Italian respondent added that they “would support the idea of adopting the same framework (the same syllabus for any level of certificate to be adopted for the different target of advisor and planners) with the possibility to get some partial (no more than 30%) flexibility in order to take into consideration the local specific need.”; and “If there are already some local requirements to be met (examination to pass or certificate to be taken with the local regulator) it would be nice to get a bridge program from the local solution to the European one in order to help harmonising”.

¹²⁷ The Polish respondent included in the fundamental criteria: “allocating a level or possible levels to the label using the European Qualifications Framework, outlining levels adequate for provision of information and separately for investment advice, key learning outcomes required by a certificate, CPD requirements and code of ethics requirements as a minimum”.

¹²⁸ Even if the United Kingdom’s respondent argued that “It is ultimately in the interest of both the EU and UK to find common ground when recognising financial advising professionals’ credentials”, he pointed out as arguments against the establishment of the pan-EU label that “The UK is no longer part of the EU and may not want to adopt EU-wide labels or requirements for financial advisors.”; that “The FCA may not want to cede control or adapt current standards to a pan-EU authority”; and that “Adopting a pan-EU label could add complexity to the UK financial advisory industry and create additional costs for advisors who need to comply with both UK and EU requirements”.

Respondents who provided arguments against highlighted that “Financial market is over-regulated” (Czech Republic)¹²⁹ and that “The costs are too high” (Germany)¹³⁰.

The creation of a pan-European certification label for financial advisors, need not necessarily be costly or involve an additional regulatory burden.

The pan-European label would be a MiFID II-IDD-compliance-hallmark in national registries, that would favour freedom to provide services in the European Union. It should be an efficient system, compliant with MiFID II and IDD, simple and viable, without adding bureaucracy or creating additional costs.

The pan-European label should be based on the following appropriate standards or common principles extracted from MiFID II and IDD:

- 1.- **Business ethics** standards as an integral part of professional standards.
- 2.- An **enhanced level** of qualification required for staff providing advice versus staff giving information using the levels stipulated by the EQF.
- 3.- **Structured training** which content is defined in learning outcomes with a validation process.
- 4.- **Certified qualification.**
- 5.- **Validated CPD** which supports the continuous updating of each certificate.

Therefore, the granting of the pan-European label would entail a two-step check:

- (i). to comply with knowledge and competence requirements stated in MiFID II and IDD, according to one of the various implementing options that the regulation provides; and
- (ii).to comply with these 5 principles.

This hallmark would not preclude Member States from using ESMA-IDD implementing options according to national flexibility. Therefore, this system would not hinder national flexibility, as it would live together with the chosen MiFID II-IDD implementing model.

The design of an efficient system would be a cross-cutting model, applicable both to securities and insurance distribution. It may also be extended to credit, cryptocurrencies and other products based in Distributed Ledger Technology (DLT).

¹²⁹ However, the Czech Republic’s respondent is in favour of creating a “register of accepted labels/qualifications which are well established on the market already and are in line with the EQF”.

¹³⁰ The German respondent argued that “There are already international "labels" (certifications) such as EFPA or FPSB award which already fulfil a pan-european level of education and examination but are not recognised in every member-state. A pan-european recognition of those certifications could solve many problems.”.

As in sustainable finance, ESMA, through **guidelines**¹³¹, and EIOPA, through **guidance**¹³², could incorporate the following principle: **the NCAs shall publish through its website a list of (i) certifications distinguished with the pan-European label, and (ii) advisors who have obtained that certification.** This could generalize the certification model, of which EFPA is an example (see Annex IV).

This system would favour financial advisors' autonomy and mobility and would enhance market confidence and investor protection by reducing the advice gap.

Furthermore, it would consolidate an open market model of certifications, even if the system could confront with other projects from third countries (e.g., EEUU, Asia...), that would have to adapt their protocols to the European system for being recognized in the EU.

¹³¹ See ESMA Guidelines on certain aspects of the MiFID II suitability requirements, ESMA35-43-1163, 06/11/2018. Available at: <https://www.esma.europa.eu/document/guidelines-certain-aspects-mifid-ii-suitability-requirements-0> (last consulted 18 April 2023).

¹³² See EIOPA Guidance on the integration of sustainability preferences in the suitability assessment under the Insurance Distribution Directive (IDD), EIOPA-BOS-22-391, 20 July 2022. Available at: https://www.eiopa.europa.eu/publications/guidance-integration-customers-sustainability-preferences-suitability-assessment-under-idd_en (last consulted 18 April 2023).

CONCLUSIONS AND PROPOSALS

Following the analysis of the EU legal framework and its implementation by the Member States, considering the official European reports, and the input received through the answers to the questionnaire, the following conclusions and proposals can be drawn:

- Within the framework of the RIS and sustainable finance, harmonization and clarification of advisor training contributes to strengthening confidence in advisors, with better management of conflicts of interest, encouraging market participation and the orientation of retail investments towards sustainable finance.
- There is a lack of harmonization in MiFID II knowledge and competence requirements among the Member States and, to a lesser extent, also in IDD knowledge and competence requirements.
- The lack of harmonization in knowledge and competence requirements for local advisors under Article 3 of MiFID II could create confusion for its lack of clarity, making difficult to choose a financial advisor compliant with MiFID II. Local advisors should be required to comply with the same knowledge and competence requirements.
- It is strongly advisable to have a taxonomy of qualification requirements. Just as the sustainable finance regulation is based on a taxonomy, MiFID II-IDD knowledge and competence requirements should be based on a clear and common definition of key concepts such as ‘knowledge’, ‘competence’, ‘qualification’, ‘training’, or ‘learning outcomes’. These divergences could hinder the role of knowledge and competence requirements of enhancing trust in advisors in the framework of the RIS and, therefore, indirectly, also diminish participation of retail investors in markets; with negative consequences in the necessary alignment of investments with ESG objectives.
- It is crucial to clarify that the fulfilment of knowledge and competence requirements means acquiring an appropriate qualification, and not only participating in a training programme.
- It is highly advisable that EQF is used in defining the level of a required appropriate qualification.
- It is essential to specify that an appropriate qualification involves observance of professional ethics standards.
- It is strongly advisable to require validated CPD for a qualification to be considered appropriate.
- In relation to the minimum period required to gain appropriate experience and the maximum period under which a staff member lacking appropriate qualification or

appropriate experience can work under supervision, the more consistent the requirements are within the EU, the better. This serves the purpose of transferability of qualifications and ease of professional relocation among EU Member states. Although more rigorous approaches are welcomed, their adoption should be coordinated and properly explained to prevent difficulties both for firms and staff if they relocate.

- The adoption of a pan-European label would favour financial advisors' autonomy and mobility and would enhance market confidence and investor protection by reducing the advice gap. Providing a voluntary European benchmark would offer huge motivation for growth among advisors, encouraging them to build their professional autonomy and work ethics.
- The design of a pan-European label should be based on the following appropriate standards or common principles extracted from MiFID II and IDD: (1) business ethics standards as an integral part of professional standards; (2) an enhanced level of qualifications required for staff providing advice versus staff giving information, using the levels stipulated by the EQF as a benchmark; (3) structured training which content is defined in learning outcomes with a transparent validation process and which lead to a qualification; (4) certified qualifications; and (5) validated CPD which supports the continuous updating of each certificate.
- The granting of the pan-European label would entail a two-step check: (i) to comply with knowledge and competence requirements stated in MiFID II and IDD, according to one of the various implementing options that the regulation provides; and (ii) to comply with these 5 principles. Given that the European label is conceived as a voluntary option, it would not hinder national flexibility, as it would live together with the chosen MiFID II-IDD implementing model.

BIBLIOGRAPHY

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: *Report on the application of the Insurance Distribution Directive (IDD)*, EIOPA-BoS-21/581, 6 January 2022.

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY: *Annexes I-VIII to the Report on the application of the Insurance Distribution Directive (IDD)*, EIOPA-BoS-21/582, 6 January 2022.

IODICE, D.: «Conclusions and policy recommendations. Tools for a MiFID that also defends workers», IODICE D. (Ed.), *MiFID II e Digitalizzazione: Come cambia la domanda di competenze e di protezione del lavoro / MiFID II and Digitalization: How the demand for skills and job protection is changing*, Adapt University Press, 2021, pp. 169-175.

KOVÁČOVÁ, L.: «Changes in the organizational models and in the labour demand and employment relationships in the banking sector due to digitalisation and the EU Directive MiFID II», IODICE D. (Ed.), *MiFID II e Digitalizzazione: Come cambia la domanda di competenze e di protezione del lavoro / MiFID II and Digitalization: How the demand for skills and job protection is changing*, Adapt University Press, 2021, pp. 121-125.

ULIČNÁ, D., VINCZE, M., MOSOREANU, M., et al.: *Disclosure, inducements, and suitability rules for retail investors study: final report*, European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Publications Office of the European Union, 2023.

ZUNZUNEGUI, F. / CORBAL, P.: «Assessment of Implementation in EU Member States of MiFID II Requirements on Knowledge and Competence», July 2018. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3384628

ANNEX I. – NATIONAL MiFID II IMPLEMENTATION RULES ON KNOWLEDGE AND COMPETENCE

1. AUSTRIA

- 02/2017 FMA Circular on the Criteria for the Assessment of Knowledge and Competence of Investment Advisors and Persons providing Information about Investment Products (Article 55 WAG 2018)

2. CZECH REPUBLIC

- Subchapter 4 of Act No. 256/2004 Sb., on Capital Market Business, as amended
- Decree No. 319/2017 of 21 September 2017 on professional qualification for distribution on the capital market

3. ESTONIA

- FSA Guidelines for assessment of knowledge and competences
- FSA Decision of the Board of May 9, 2016 No. 1.1-7/59.

4. FRANCE

- Article L. 533-12-6 du code monétaire et financier
- Articles 312-3 et suivants, 314-9 et suivant, 316-2, 318-7 et suivants, 321-1 et 321-37 et suivants du règlement général de l’Autorité des Marchés Financiers
- Position – recommandation AMF L’évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018

5. GERMANY

- Section 87 of the Securities Trading Act (Wertpapierhandelsgesetz – WpHG)
- WpHG Employee Notification Ordinance of December 21, 2011 (BGBl. I p. 3116), which was last amended by Article 1 of the Ordinance of November 24, 2017 (BGBl. I p. 3810)

6. HUNGARY

- Decree No. 37/2017 (XII. 27.) MNB on the Requirements Relating to the Professional Qualifications and Competences Prescribed for Natural Persons Providing Investment Advice or Information to Clients on Financial Instruments, Investment Service Activities or Ancillary Services

7. IRELAND

- S.I. No. 375/2017 European Union (Markets in Financial Instruments) Regulations 2017

- S.I. No. 391/2017 - Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017
- Central Bank of Ireland Minimum Competency Code 2017

8. ITALY

- Regolamento recante norme di attuazione del decreto legislativo 24 febbraio 1998, n. 58 in materia di intermediari (adottato dalla Consob con delibera n. 20307 del 15 febbraio 2018 e successivamente modificato con delibera n. 21466 del 29 luglio 2020, con delibera n. 21755 del 10 marzo 2021 e con delibera n. 22430 del 28 luglio 2022) [‘Regolamento intermediari’]

9. LUXEMBOURG

- Circular CSSF 17/665 of 31 July 2017
- Circular CSSF 17/670 of 13 October 2017

10. NETHERLANDS

- DSI General Regulations, 2 July 2021

11. POLAND

- Ordinance the Minister of Finance of May 29, 2018, on detailed technical and organizational conditions for investment firms, banks referred to in Art. 70 sec. 2 of the Act on Trading in Financial Instruments, and custodian banks.

12. PORTUGAL

- Regulamento da CMVM n.º 3/2018 Regulamento que visa definir os conteúdos mínimos a dominar pelos colaboradores, de intermediários financeiros, que prestam serviços de consultoria para investimento, de gestão de carteiras por conta de outrem ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares, assim como pelos consultores autónomos, regulamentando também qualificações e aptidões profissionais a todos exigidas [‘Regulamento da CMVM n.º 3/2018’]
- Regulamento da CMVM n.º 6/2022 Conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros e pelos consultores autónomos (altera o Regulamento da CMVM n.º 3/2018)

13. SPAIN

- Guía Técnica 4/2017 para la evaluación de los conocimientos de competencias del personal que informa y que asesora, Madrid, 27 de junio de 2017

14. UNITED KINGDOM

- FCA’s Senior Management Arrangements, Systems and Controls sourcebook [‘SYSC’], Chapter 5



- FCA's Training and Competence sourcebook ['TC']

ANNEX II. – NATIONAL IDD TRANSPOSITION RULES ON KNOWLEDGE AND COMPETENCE

1. AUSTRIA

- Federal law amending the 1994 Industrial Code, the Banking Act, the Financial Market Authority Act, the Broker Act and the Insurance Supervision Act (2018 Insurance Mediation Amendment)

2. CZECH REPUBLIC

- Sections 55-70 of Law dated July 26, 2018, on the distribution of insurance and reinsurance

3. FRANCE

- Article R512-13-1 (Création Décret n° 2018-431 du 1er juin 2018 - art. 3) du Code des assurances
- Article A512-8 (Creation Order of September 26, 2018 - art. 1) du Code des assurances
- Arrêté du 26 septembre 2018 relatif à la liste des compétences éligibles pour des actions de formation ou de développement professionnel continus prévus à l'article R. 512-13-1 du code des assurances

4. GERMANY

- Insurance Mediation Ordinance of 17 December 2018 (Insurance Mediation Ordinance - VersVermV)

5. HUNGARY

- Decree Act LXXXVIII of 2014 on the Business of Insurance

6. IRELAND

- S.I. No. 229 of 2018 European Union (Insurance Distribution) Regulations 2018
- Central Bank of Ireland Minimum Competency Code 2017

7. ITALY

- Regolamento IVASS N. 40 del 2 Agosto 2018

8. LUXEMBOURG

- Loi modifiée du 7 décembre 2015 sur le secteur des assurances (modifiée par la Loi du 10 août 2018 portant transposition de la directive (UE) 2016/97 du Parlement européen et du Conseil du 20 janvier 2016 sur la distribution d'assurances et modifiant la loi modifiée du 7 décembre 2015 sur le secteur des assurances)
- Commissariat aux Assurances Regulation No 19/01 of 26 February 2019 on insurance and reinsurance distribution

9. POLAND

- USTAWA of 15 December 2017 on insurance distribution

10. SPAIN

- Real Decreto-ley 3/2020, de 4 de febrero, de medidas urgentes por el que se incorporan al ordenamiento jurídico español diversas directivas de la Unión Europea en el ámbito de la contratación pública en determinados sectores; de seguros privados; de planes y fondos de pensiones; del ámbito tributario y de litigios fiscales
- Real Decreto 287/2021, de 20 de abril, sobre formación y remisión de la información estadístico-contable de los distribuidores de seguros y reaseguros

11. UNITED KINGDOM

- FCA's Senior Management Arrangements, Systems and Controls sourcebook ['SYSC'], Chapter 28
- FCA's Training and Competence sourcebook ['TC']

ANNEX III. – QUESTIONNAIRE SENT TO RELEVANT RESPONDENTS AMONG NATIONAL EFPAS

A. In relation to the proposal for the introduction of a voluntary pan-EU label for financial advisors:

1. Whether you are in favour or against establishing a **pan-EU label for advisors** and why.
2. Whether the pan-EU label should detail **knowledge requirements and training requirements**.
3. Whether the pan-EU label should detail **requirements in relation to the ways competences would be tested** for the issuance of the label (i.e., exam).
4. Whether the pan-EU label should detail requirements on **continuous professional development** (i.e., required hours per year).
5. Whether the pan-EU label should be **set-up and managed** by the European Supervision Authorities (the **ESAs**, ESMA/EIOPA); by the National Competent Authorities (**NCA**s); or by **professional certification bodies** accredited by the ESAs/NCA

B. In relation to the relevant regulation in your jurisdiction developed according to Article 25.1 of MiFID II and ESMA Guidelines for the assessment of knowledge and competence (ESMA 2015/1886) and according to Article 10 and Annex I of IDD:

6. Whether the criteria that qualifications must meet to be considered appropriate include **business ethics standards**.
7. Which are the **criteria** that the **qualification** and the **continuous professional development** must meet: training borne by the firm (internal) or by an external body (external).
8. Whether the criteria that the **qualification** must meet require the **separation between the trainer and the evaluator** (firm/external body).
9. Whether the **review of staff member's appropriate qualification** should be carried out by the firm (internally) or by an external body (externally).
10. Whether the regulatory option on **national advisors** (provided in **Article 3.2 of MiFID II**) has been exercised in your jurisdiction; and, in such case, whether **the knowledge and competence requirements of MiFID II** has been extended to **national advisors**.

11. Whether a **harmonized-intersectoral regime** should be established for the **MiFID II and IDD scope**.
12. Whether **MiFID II knowledge and competence requirements** for a qualification be considered appropriate **should be extended to the IDD scope?**
13. Whether **IDD minimum continuous professional development requirements** (15 hours per year) should be extended to the MiFID II scope.

ANNEX IV. – AN EXAMPLE OF QUALITY MARKET AND FLEXIBLE STANDARD: THE EFPA CERTIFICATIONS

The main objective of EFPA is to promote the development and dissemination of international professional standards of excellence to contribute to the highest level of quality in the professional practice of financial advisers for their clients.

EFPA works to ensure that the knowledge and practices of financial advisers reach the level of excellence required by demanding customers through the dissemination of a code of conduct and appropriate certifications.

EFPA thus enables financial advisers to ensure the acquisition and maintenance of their knowledge and skills through certifications recognized at the European level.

To enable each professional to demonstrate to their clients, employers, and regulators that they have effectively acquired an appropriate level of knowledge and competence, the national EFPAs organize certification exams to check and validate the level of professionalism needed and ensure the maintenance of the knowledge and skills of each certificate holder through continuing education.

EFPA CERTIFICATION LEVELS

To deliver quality standards adapted to the various functions of financial advisors, EFPA delivers four distinct levels of certification, all of them suited for financial professionals who deal directly with clients. For each level of certification, EFPA developed a tailor-made syllabus defined with detailed learning outcomes, which must be confirmed during exams.

- ***The European Investment Assistant® Certificate (EIA) is for those who offer information on financial products.***

This certification is designed to meet the requirements set by art. 17 of the ESMA Guidelines on knowledge and competences for staff giving information on financial products. The training programs should be covered in a minimum of 5 classroom days or 40 tuition hours (or equivalent).

This first level of certification is suited for employees of financial institutions working with retail customers or people offering limited investment information to final customers.

- ***The European Investment Practitioner® Certificate (EIP) is for those who offer a basic advisory service.***

This certification is designed to meet the requirements set by art. 18 of the ESMA Guidelines on knowledge and competences for staff giving investment advice. The training programs should be covered in a minimum of 10 classroom days or 80 tuition hours (or equivalent), or 5 classroom days on top of the EIA certificate.

This level of certification is suited for assistants of portfolio managers or assistants of relationship managers who offer limited investment services and have limited interaction with final customers.

- ***The European Financial Advisor® Certificate (EFA) is aimed at practitioners with an extended financial advisory activity. It is the most widespread level of European certification.***

This certification refers to professionals who offer a rigorous service of assessing clients' needs and developing financial solutions, particularly concerning investments at individual portfolio level, but also including basic insurance/ retirement / credit/ financing solutions. The recommended accredited educational programs should be covered in a minimum of 20 classroom days or 160 tuition hours (or equivalent), or 10 classroom days on top of the EIP certificate.

This certification is suited for portfolio managers for individual clients, relationship manager and all professionals offering investment services and interacting with final customers.

- ***The European Financial Planner® (EFP) is the highest level of EFPA's certificates. It concerns the financial planning activity as a whole.***

This certification validates the knowledge and skills in an integrated practice of financial planning including investments at individual portfolio level, estate planning, international taxation, retirement, and insurance needs not only for private clients but also for business owners. The recommended accredited educational programs should be covered in a minimum of 40 classroom days or 320 tuition hours (or equivalent), or 20 days on top of the EFA.

This certification is suited for wealth planners, family officers and all professionals offering wealth management services to final customers.

Besides, EFPA has launched the *EFPA ESG Advisor® Certificate*, covering the foundations of knowledge and skills needed to offer sustainable investments to customers and in compliance with the recent regulatory qualification requirements in this respect.

With these different levels of certificates, the EFPA certification path has been developed to recognize professional skills and support career developments of financial advisors at different stages and for different professional roles. In terms of level, the EFPA certificates spread between a EQF3 and a EQF6¹³³.

¹³³ See Recommendation of the European Parliament and the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning, Official Journal of the European Union, 6 May 2008; EUROPEAN COMMISSION, «Explaining the European Qualifications Framework for Lifelong Learning», Education and Culture DG, Lifelong Learning: Education and Training policies, Coordination of Lifelong Learning Policies, Office for Official Publications of the European Communities, 2008, p. 4 (available at: <https://europa.eu/europass/system/files/2020-05/EQF-Archives-EN.pdf>; last consulted 14 April 2023); EUROPEAN COMMISSION, «The European Qualifications Framework: supporting learning, work and cross-border mobility», Luxembourg: Publications Office of the European Union, 2018 (available at: <https://ec.europa.eu/social/BlobServlet?docId=19190&langId=en>; last consulted 14 April 2023).



The certifications granted by EFPA are based on the fundamental qualification standards according to European recommendations stipulated by the European Qualifications Framework, ECVET and EQAVET. In the Member States where the regulators have published a list of recognised certificates (e.g., Ireland, Luxembourg, Spain), EFPA certificates are recognised and listed therein.

The core features of EFPA certifications are:

- Content requirements of each certificate are defined in learning outcomes, i.e., statements of what a learner knows, understands and is able to do on completion of a learning process. This specifies in a clear way the knowledge and skills which a given certificate confirms, which facilitates the examination and validation process.
- Each certificate is allocated a level, using the 8 levels of qualifications stipulated by the EQF; this gives an orientation of the level of complexity and scope of a given certificate.
- Each certificate is supported by a CPD requirement, which assures that the certificate is always updated.
- The EFPA Code of Ethics constitutes an integral part of the EFPA professional standards across all certificates.
- A rigorous examination process safeguards the quality of EFPA standards which is regularly monitored by the European and national Standards and Qualifications Boards.

The EFPA examination standards are set at the European level and safeguarded by the European Standards and Qualifications Committee (SQC) of EFPA. The accreditation procedure for local organizations allows a 30% rule of flexibility which provides for the local exams to be adjusted to national circumstances, mainly in the legal and regulatory aspects of the standards requirements. This is conditioned by the approval of SQC.

EFPA standards are continuously monitored and updated to maintain a level of excellence for the certifications and to follow the European regulations.

An ethics code is an important pillar in the certifications, to ensure the EFPA certificate holders respect the highest standard of professionalism required by the financial markets. Failure to comply with the code of ethics may result in the withdrawal of the EFPA certification of a financial adviser. In this case, the decision is taken by an independent Ethics Committee.

EFPA FOR CONTINUITY

After their certifications, it is required for the EFPA certificate holders to take part to a continuous professional development (CPD) program to maintain their certifications.

This is mandatory to ensure that certificate holders maintain a high level of knowledge and skills, tailored to the needs of their clients. It also helps to avoid professional obsolescence and to update the knowledge of professional advisers in line with regulatory changes.

By requiring financial advisors to continue their professional development, EFPA guarantees the value of its certifications. This allows the final clients to be assured that their financial advisors meet the highest standards of knowledge and ethics, providing them with a guarantee of good conduct and practice. The final clients can then build their trust on the EFPA label.

- ***The EFPA ESG Advisor® example***

In 2021, EFPA launched the EFPA ESG Advisor® Certificate, to raise the awareness of financial advisors on Sustainable Finance issue. This 24-hour certificate depicts a large panorama of what Sustainable Finance is –where does it come, what are the relative regulations, what are the main asset allocation tools, what the investment products available, etc.– to prepare the advisors to answer the questions of their clients.

This additional certificate is a good example of how a CPD program can inform professionals of the latest regulatory changes and enhance the value of their professional education efforts to the public.

EFPA FOR FLEXIBILITY AND RELEVANCE

In the content

To take care of the local specificities, EFPA standards are flexible. Based on a common core defined by EFPA Europe, each module of the certifications can be customized until 30% of its content in each country. This allows to adapt the certifications on specific themes like pension and retirement, insurance products, tax issues, etc.

With such a flexibility, the holders of an EFPA certificate share common basis of knowledge and a common level of competence for each certification across Europe. At the same time, they have access to local knowledge and practices adapted to the needs of their clients. This flexibility allows to build a common European standard adapted to the local constraints.

Geographically

To add to this flexibility, the certifications offered by the different national EFPAs undergo rigorous scrutiny of EFPA Europe against common standards. This results in reciprocal recognition of means the certifications issued by a national EFPA by the others.

If a financial adviser, holding an EFPA certification, moves to a new country, it is possible for him/her to have his/her certification recognized by the national EFPA of the country where (s)he moves - this recognition will be only partial in the United Kingdom due to the Brexit -.

The financial advisor moving in a new country will only have to complete the common core (s)he acquired with his/her certification with specific content of the new country through the continuous professional development program. This allows the advisor to move in the MiFID II and IDD area with a unique certification.

Being recognized by different regulators, with an option for a bridging solution, is one of the strengths of the EFPA certifications. Thanks to a common European standard, the EFPA certifications already allow financial professionals to value their skills in different countries, what the certifications provided by national regulators does not offer today.

EFPA FOR TRANSFERRABLE VALUE

Today, various national regulators have made professional training on different topics mandatory for financial professionals. While this is important and beneficial for the clients, what value does it hold for professionals at the end of their training? Can they passport this experience to another employer or to another country? When they undergo a social plan?

Following the definition of EQF, a qualification is «the formal outcome of an assessment and validation process obtained when a competent body determines that an individual has achieved learning outcomes to given standards». This means that a certificate is our professional ID, with which we can professionally travel, among different roles, different employees and –provided adequate mutual recognition facilities are in place– among different jurisdictions. A professional certificate is a way to harmonize the EU markets, building on what we have already developed and providing enough flexibility to local characteristics and needs.

With a certification, each professional can value his/her professional training path and capitalize on it. The training efforts made by professionals thus become a real added value for them and their employers.

The cost of certification itself is largely offset by the added value generated for holders and employers. With the official recognition of a certain level of competence, a client can finally judge the level of his/her financial advisor. This can only be beneficial for the client, the financial adviser, the adviser's employer, and the regulators.

ANNEX V. – COMPARATIVE CHART ON MiFID II-IDD

MiFID II		Relevant regulation	IDD	
References			References	
(§ 21)	Criteria or list	Criteria/ list published by CA	Mechanisms to control	10.2
(§ 14)	Yes	Business Ethics Standards	Yes	(Annex I, 1g)
	No	Min. regulated education required to access qualification	No	
(§ 4.g)	Test or training course	Certificate/ test/ training	Certificate	10.2
	No	Criteria that the qualification must meet	No	
	No	Classroom / distance learning	No	
	No	Internal / external	No	
	No	Hours	No	
(§ 20.b)	Yes	Adv Info Requirement	Yes	10.2
	No	Criteria that CPD must meet	No	
	No	Classroom / distance	No	
	No	Internal / external	No	
	No	Hours	15h/y	10.2
	No	Adv Info	15h/y	10.2
(§ 4.h)	6 months	Min. period to gain experience	No	
(§ 4.j; 20.h)	4 years	Max. period for working under supervision	No	
(§ 20.b)	Internal or external	Internal / external review of staff qualification	No	
	Annual frequency	Separation trainer/ evaluator	No	
	No		No	