

ASSESSMENT OF IMPLEMENTATION IN EU MEMBER STATES OF MiFID II REQUIREMENTS ON KNOWLEDGE AND COMPETENCE ¹

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ABSTRACT

This report analyses divergencies in the implementation in EU Member States of ESMA Guidelines for the assessment of knowledge and competence, issued in December 2015 (ESMA 2015/1886). We have reviewed Member States MiFID II transposition rules on knowledge and competence requirements and have drawn some conclusions and proposals with the aim of enhancing regulatory and supervisory convergence.

Keywords: MiFID II, ESMA, knowledge, competence, qualification, training, investment advice, information, financial instruments, financial services.

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¹ The report was requested and has been supervised and approved by Josep Soler-Albertí, CEO of EFPA Spain. The report's background has been developed based on EFPA Poland's Mariola Szymańska-Koszczyk's Working Paper «MiFID II implementation. Common standards or common divergence in qualifications standards».

² Acting as regulation coordinators of the European Financial Planning Association (EFPA) by means of Zunzunegui Securities Lawyers, and with the assistance of Karim Zouhdi, EFPA Executive Manager.

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
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
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)
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

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 all EU Member States have informed ESMA their intention to comply with.

The European Financial Planning Association (EFPA) is a standards' setting and accrediting qualifications institution operational in the financial services sector in Europe, which mission is to set, promote and implement high quality standards for competence and ethical behaviour for the financial advisory sector throughout Europe. It was created in the interest of both professional financial advisers and users of their services.

This report analyses the implementation in EU Member States of ESMA Guidelines for the assessment of knowledge and competence. After summarising the background and explaining the research methodology, the report assesses the differences arisen between EU Member States relevant rules in the implementation process. As a result, some conclusions and recommendations are provided, mainly to suggest that ESMA conducts a broader and deeper 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.

Thus, ESMA's revision could include an assessment of EU Member States fulfilment of ESMA Guidelines (§ 14) requisite of business ethics standards; the minimum previous formal education requirements based on the common reference of European Qualification Framework (EQF) that might condition access to an appropriate qualification; the characteristics and European qualification standards that should serve as common tools to provide transparency and comparability of qualifications and offer a strong measure for implementing the required rule of proportionality; the compulsory separation between training and evaluation; the criteria that continuing professional development (CPD) training and evaluation must fulfil to be considered that they comply with ESMA Guidelines requirement; the compulsory requirement of CPD as part of qualifications programmes to be considered appropriate; the implications 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; and the advisability of requiring an external review of staff's qualification.

Moreover, we would like to propose that ESMA organises a Public Hearing on knowledge and competence requirements to enhance regulatory and supervisory convergence.

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) entered into force on January 3, 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.».

Being the aim of the Directive to provide greater protection for investors and market transparency through harmonised national regulatory provisions, ESMA was authorised under Article 25.9 MiFID II to adopt guidelines specifying criteria for the assessment of knowledge and competence required by the Directive.

ESMA Guidelines 2015/1886, issued in December 2015 (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), and consider various options for their implementation.

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. 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.

However, when stating criteria for knowledge and competence for staff providing advice or giving information, ESMA does not 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: European Qualifications Framework (EQF), European Credit System for Vocational Education and Training (ECVET) and European Quality Assurance Reference Framework for Vocational Education and Training (EQAVET).

▪ **European Qualifications Framework (EQF)**

The European Qualifications Framework for lifelong learning (EQF)³ 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.

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 levels⁴. Besides, EQF is compatible with the Framework for Qualifications of the European Higher Education Area, which provides ‘descriptors for cycles’ (statements of achievements and abilities associated with qualifications that represents the end of each cycle). The descriptor for each cycle can be linked with a EQF levels, from EQF level 5 (higher education short cycle) to EQF level 8 (third cycle in the Framework for Qualifications of the European Higher Education Area)⁵.

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. The process of implementation started in 2008. It begun referring national qualifications levels to the EQF by 2010 and continued introducing a reference to the EQF in all new qualification certificates and diplomas issued by competent authorities by 2012.

On 22 May 2017 the Council adopted a revised EQF replacing the Recommendation of 2008⁶, under which all Member States and several Non-Member States⁷ committed themselves to further develop the EQF. By

³ 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.

⁴ 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://ec.europa.eu/ploteus/sites/eac-efq/files/brochexp_en.pdf

⁵ See Annex II of 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.

⁶ 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.

April 2018, 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, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Switzerland, Turkey and the United Kingdom (England, Scotland and Wales). The remaining countries are expected to follow in 2018, finishing the first stage of EQF referencing⁸.

▪ **European Credit System for Vocational Education and Training (ECVET)**

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)⁹ is a methodological 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.

ECVET comprises the description of qualifications in terms of 'units of learning outcomes' (a component of a qualification, consisting of a set of knowledge, skills and competence, that can be assessed and validated) with associated 'ECVET points' (a numerical representation of the overall weight of learning outcomes in a qualification) and a 'credit' (a set of assessed learning outcomes) transfer and accumulation process.

ECVET improves transparency, transnational mobility and portability of learning outcomes within Member States facilitating mobility among learners throughout EU, overcoming diversity of national systems that define the levels and content of qualifications¹⁰.

Moreover, ECVET contributes to permeability between levels of education and training by facilitating the compatibility, comparability and complementarity of credit systems used in vocational education and training and the European Credit Transfer and Accumulation System ('ECTS')¹¹ used in the higher education in the European Higher Education Area.

According to the European Parliament Recommendation, credit transfer based on ECVET should be facilitated by establishing partnerships and networks involving competent institutions.

▪ **European Quality Assurance Reference Framework for Vocational Education and Training (EQAVET)**

⁷ In addition to the 28 EU Member States another 11 countries work towards implementing the EQF: Iceland, Liechtenstein and Norway (EEA countries), Albania, Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey (candidate countries), Bosnia & Herzegovina, Kosovo and Switzerland (potential candidate countries). See: <https://ec.europa.eu/ploteus/en/content/how-does-eqf-work>

⁸ See: <http://www.cedefop.europa.eu/en/events-and-projects/projects/european-qualifications-framework-eqf>

⁹ 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>

¹⁰ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:c11107>

¹¹ See: https://ec.europa.eu/education/resources/european-credit-transfer-accumulation-system_en

ECVET should be underpinned by the common principles of the European Quality Assurance Reference Framework for Vocational Education and Training (EQAVET)¹², 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.

In 2015, these three recommendations were successfully integrated by the **European Banking and Financial Services Training Network (EBTN)**¹³, developing the ‘**Triple E Standard**’.

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 provide¹⁴.

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»¹⁵. 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. For instance, **EFPA certificates EFA and EIP**, have been granted the Triple E Standard of quality.

The Triple E Standard provides greater transparency of qualifications and mobility of qualification holders. Hence, it helps to restore trust and confidence in the services provided by employees of the financial services sector.

¹² 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>

¹³ 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>

¹⁴ See: <http://www.triple-e-ebtn.eu/>

¹⁵ 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.

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»¹⁶.

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»¹⁷.

¹⁶ 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.

¹⁷ 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.

AIM AND METHODOLOGY

ESMA Guidelines apply from 3 January 2018, and since then they are expected to promote greater convergence in the knowledge and competence of staff providing investment advice or information about investment products and services to clients.

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 National Competent Authority (hereinafter, 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.

However, the Guidelines do not make use of the existing tools and measures that can make the requirements more precise and transparent. The lack of reference to EU recommendations on qualifications frameworks for vocational education and training for defining the level and intensity of the knowledge and competence that would meet the criteria specified in the guidelines, might be leading to a divergent implementation of MiFID II knowledge and competence requirements. In fact, the divergence starts from the definition of 'qualification', as ESMA Guidelines does not follow the definition recommended by the European Parliament through EQF, and makes a confusing equivalence between 'qualification', 'test' and 'training'.

Besides, ESMA Guidelines consider various options for their implementation: through the publication by the 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.

Finally, it must be remembered that 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, as of December 2016 all the EU Member States had informed ESMA their intention to comply with the Guidelines for the assessment of knowledge and competence¹⁸. However, there is no available official data at EU level on the compliance progress since then. Furthermore, available information on MiFID II

¹⁸ See: https://www.esma.europa.eu/system/files_force/library/2016-1093_compliance_table_-_guidelines_for_the_assessment_of_knowledge_and_competence_0.pdf

transposition shows that several EU Member States (i.e. Romania, Slovenia) have not yet adopted any transposition rules¹⁹.

Taking into consideration that the main goal of MiFID II is investor protection through harmonisation and transparency, and that the final national implementation regulations are not in place in all the Member States as of June 2018, it is worthwhile to briefly review the first national implementation approaches, so that we can assess whether we are getting common standards or divergencies in the implementation process of MiFID II knowledge and competence requirements.

To achieve this purpose, we have analysed Member States MiFID II transposition rules on knowledge and competence requirements, and we have conducted a **survey among Member States** by means of sending a questionnaire²⁰ through which we have gathered information on implementation of ESMA Guidelines.

We have received input from 16 of the 28 EU Member States²¹: Austria, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and United Kingdom.

Besides, we have had access to national MiFID II transposition rules on knowledge and competence requirements from 11 EU Member States: Austria, the Czech Republic, France, Ireland, Italy, Hungary²², Luxembourg, the Netherlands²³, Poland, Portugal, Spain and United Kingdom. It is worth noting that linguistic diversity represents a challenge for accessing the relevant documentation. As a matter of fact, our research has had to be necessarily adapted to researcher's language skills²⁴.

¹⁹ 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 13 June 2018).

²⁰ 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.

²¹ Serbia has also answered the questionnaire, although it is still a candidate country in the process of integrating EU legislation into national law.

²² Researchers have only had access to an abstract (sections 1 to 10) of the relevant Hungarian rules contained in 37/2017. (XII.27.) MNB Decree about requirements for professional skills and competences for staff providing investment advice or information on financial instruments, investment services or ancillary services.

²³ Researchers have only had access to publicly available official information issued in English by the Dutch Securities Institute (DSI), 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/professional/certification/the-esma-guidelines-dsi-and-you>

²⁴ Researchers have knowledge of English, French, Italian, Portuguese and Spanish. Therefore, we have had no access to the following Member States official regulation or relevant information on the implementation process:

Considering criteria stated in ESMA Guidelines, and following the said methodology, we have assessed the following items in each of the Member States of which we have data:

1. Whether the NCA in each jurisdiction:
 - a. has published the criteria of ESMA Guidelines as well as the characteristics that an appropriate qualification needs to meet to comply with those criteria; and/or
 - b. has issued a list of the specific appropriate qualifications that meet the criteria of ESMA Guidelines;
2. Whether the criteria that qualifications must meet to be considered appropriate include business ethics standards;
3. Whether a minimum formal education is required to access the qualification;
4. Which are the criteria that the qualification must meet:
 - a. Classroom learning or distance learning;
 - b. Training borne by the firm (internal) or by an external body (external);
 - c. Number of class hours for providing advice and for giving information;
 - d. Separation between trainer and evaluator;
5. Which are the criteria that continuous professional development or training must meet:
 - a. Classroom learning or distance learning;
 - b. Training borne by the firm (internal) or by an external body (external);
 - c. Number of class hours for providing advice and for giving information;
6. Which is 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;
7. Whether the review of staff member's appropriate qualification should be carried out by the firm (internally) or by an external body (externally).

Germany, Finland, Romania, Slovenia, Estonia, Cyprus, Denmark, Greece, Sweden, Slovakia, Malta, Croatia, Bulgaria, Lithuania and Latvia. Information on the Polish official regulation has been provided by Mariola Szymańska-Koszczyk (Chairman of EFPA Poland).

RELEVANT ISSUES

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 jurisdiction.

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, Poland, Portugal²⁵), and some of them have also published a list of the specific appropriate qualifications that effectively meet those criteria (e.g. the Czech Republic²⁶, Luxembourg²⁷, Spain²⁸). None of the NCAs have opted to only publish a list of appropriate qualifications.

Apart from the Member States in which no measures have been already taken to implement MiFID II knowledge and competence requirements (i.e. Romania, Slovenia²⁹), there are Member States (e.g. Austria, Estonia³⁰) that have only published the translation of ESMA Guidelines as its own guidelines and have announced the inclusion of supervisory practices

²⁵ As for the date of this assessment, the Portuguese Securities Market Commission (CMVM) has only published a Draft regulation on the requirements of knowledge and competence (see Consulta Pública n.º 3/2017, Projeto de Regulamento da CMVM que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares, consultation documents available at:

<http://www.cmvm.pt/pt/Legislacao/ConsultasPublicas/CMVM/Paginas/20170621.aspx?v=>; and Consulta Pública CNSF n.º 1/2016, Anteprojetos de transposição da DMIF II / RMIF, consultation documents available at: <http://www.cmvm.pt/pt/Legislacao/ConsultasPublicas/ConselhoNacionalDeSupervisoresFinanceiros/Paginas/20161229a.aspx>).

²⁶ Czech National Bank (CNB) has issued rules on the accreditation requirements for institutions to be authorised by the CNB for organising examinations, and on the examinations content and duration (see Decree No. 319/2017 of 21 September 2017 on professional qualification for distribution on the capital market). Training for the exam is not prescribed in any way. According to answers received to the questionnaire, CNB has published a list of existing local exams accepted to prove qualification under MiFID II.

²⁷ See § 6 of Circular CSSF 17/665 of 31 July 2017, and its development in Circular CSSF 17/670 of 31 October 2017.

²⁸ 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.

²⁹ According to answers received to the questionnaire. 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 13 June 2018).

³⁰ According to answers received to the questionnaire.

on their compliance. For instance, Austrian Financial Market Supervisor (FMA) has published the translation of ESMA Guidelines criteria for knowledge and competence (§§ 17 and 18) and the minimum information required by ESMA Guidelines (§ 22) to be published by NCAs³¹.

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

United Kingdom's regime is included in the Financial Conduct Authority (FCA) Handbook as part of its High Level Standards. It comprises both a high level competence requirement that applies to staff engaged in all United Kingdom authorised firms, set out in Chapter 5 of FCA's Senior Management Arrangements, Systems and Controls sourcebook ('SYSC') and more detailed requirements for certain retail activities, set out in Chapter 4 of FCA's Training and Competence sourcebook ('TC')³². Moreover, for **regulated activities within TC**³³ there are certain qualification requirements to be met by attaining **corresponding appropriate qualifications**³⁴. This training and competence regime has been **amended to comply with ESMA Guidelines**. Therefore, **FCA has 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 Guidelines³⁵.

Likewise, in the case of **Ireland**'s regime, the **Central Bank** has included the criteria established in ESMA Guidelines in its general existing regime set out in the Minimum Competency Code³⁶, rather than issue a list of specific appropriate qualifications that meet ESMA Guidelines. Therefore, a person providing relevant services³⁷ 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

³¹ See FMA Circular 'The criteria for the Assessment of Knowledge and Competence of Investment Advisors and Persons providing Information about Investment Products (Article 55 WAG 2018), 21 August 2017. Available at: <https://www.fma.gv.at/en/fma/fma-circulars/> (hereinafter, 'FMA Circular').

³² 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>).

³³ See FCA's TC Appendix 1.

³⁴ 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.

³⁵ See FCA's Policy Statement PS17/14, July 2017, p. 117.

³⁶ 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>).

³⁷ See Central Bank of Ireland's Minimum Competency Code 2017, Part 1, Section 1.2, p. 8.

Competency Code³⁸), **at least 6 months' experience** (on a full time equivalent basis) and is compliant with requirements of **continuing professional development (CPD)**³⁹. Notwithstanding, the Central Bank of Ireland recognised certain special rules to be met by a person considered 'new entrant'⁴⁰ or who is performing a 'prescribed script function'⁴¹. Besides, the Central Bank of Ireland has included '**additional standards for certain functions**' to meet the requirements set out in ESMA Guidelines⁴². 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.

Besides, **France** had already in place a general minimum knowledge verification system applicable to staff of investment firms⁴³. In complying with ESMA Guidelines, the French Financial Markets Authority (AMF) has developed a regime for the assessment of knowledge and competence required to staff providing relevant services⁴⁴. **This new regime for the assessment of knowledge and competence coexists with the former minimum knowledge verification scheme**⁴⁵.

Moreover, the **Netherlands** has also adapted its own existing system to ESMA Guidelines. The system was based on the Dutch Securities Institute (DSI) standards for self-regulation and entailed to pass a knowledge exam by new license holders and continuing professional development (CPD) exams on integrity, knowledge and competence every 3 years⁴⁶. 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

³⁸ The updated list of recognised qualifications is available at: <https://www.centralbank.ie/regulation/how-we-regulate/authorisation/minimum-competency/qualifications>

³⁹ See Central Bank of Ireland's Minimum Competency Code 2017, Part 1, Section 1.3, pp. 8-9.

⁴⁰ As defined in Central Bank of Ireland's Minimum Competency Code 2017, pp. 5-6.

⁴¹ As defined in Central Bank of Ireland's Minimum Competency Code 2017, p. 6.

⁴² See Central Bank of Ireland's Minimum Competency Code 2017, Part 2, pp. 17-18.

⁴³ See Article 312-3 (and following) of Règlement Général de l'Autorité des Marchés Financiers (available at: <http://www.amf-france.org/eli/fr/aa/amf/rg/20180608/notes/fr.html>). Further information on the control of minimum knowledge and exams certification is available at: <http://www.amf-france.org/Acteurs-et-produits/Prestataires-financiers/Certification-professionnelle>

⁴⁴ See Article L533-12-6 of the Code monétaire et financier (available at: <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072026&idArticle=LEGIARTI000032755169>) and Position-recommandation AMF L'évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018, Section 2.1, p. 3.

⁴⁵ See Position-recommandation AMF L'évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018, Section 2.1, p. 4.

⁴⁶ According to answers received to the questionnaire.

and, in return, the AFM supports DSI's certification program⁴⁷. Therefore, DSI has updated its learning goals considering criteria stated in ESMA Guidelines⁴⁸.

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

2.- BUSINESS ETHICS STANDARDS INCLUDED

Furthermore, 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**. 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 qualifications. Thus, only Finland⁴⁹, France⁵⁰, Luxembourg⁵¹, the Netherlands⁵², Portugal⁵³, Ireland, and United Kingdom, have expressly included ethics as part of the criteria that qualifications must meet to be considered appropriate.

⁴⁷ See information available at: <https://www.dsi.nl/en/professional/certification/the-esma-guidelines-dsi-and-you>

⁴⁸ See Learning Goals DSI/ESMA, available at: https://www.dsi.nl/files/learning_goals_dsiesma_institutional_investment_advisor.pdf

⁴⁹ According to answers received to the questionnaire.

⁵⁰ See Position-recommandation AMF L'évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018, Section 2.1, p. 2.

⁵¹ 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 31 October 2017.

⁵² DSI-certified professionals subscribe to a Code of Conduct supervised by fully independent Ethics Committee, which violation shall 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, 1 January 2018, available at: <https://www.dsi.nl/files/codeofconduct.pdf>

⁵³ See Annex of the Projeto de Regulamento da CMVM que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares.

United Kingdom has included **achieving a good standard of ethical behaviour** as part of **competence requirements**⁵⁴ 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»⁵⁵.

In the case of **Ireland**, qualifications aiming to be included in the list of recognised qualifications⁵⁶ must incorporate **a module in relation to ethics** of at least one hour in duration **as part of its CPD requirements**⁵⁷. Moreover, competencies that recognised qualifications must cover include the recognition of ethical issues arising in relation to the conduct of business⁵⁸.

It is worth noting that **slightly imprecise official translation of ESMA Guidelines into different languages** creates divergencies 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 recently confirmed EFPA Spain that, according to its Technical Guide implementing ESMA Guidelines⁵⁹, 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, it should be pointed out that **EU Member States compliance with the requirement of business ethics standards is of utmost importance** to achieve the objectives pursued by ESMA Guidelines.

⁵⁴ See FCA’s TC 1.1.4G, ‘meaning of competence’.

⁵⁵ See FCA’s TC Appendix 6.1.1G, §17.

⁵⁶ See Central Bank of Ireland’s Minimum Competency Code 2017, Appendix 4.

⁵⁷ 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.

⁵⁸ See Central Bank of Ireland’s Minimum Competency Code 2017, Appendix 3, Section 19, p. 44.

⁵⁹ 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 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*.

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, 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. the Czech Republic, Hungary, Ireland, Italy).

For instance, in the **Czech Republic**, the minimum general knowledge shall be substantiated by a certificate of graduation (secondary education diploma) or a certificate of higher education⁶⁰.

Furthermore, **Hungary's** regime requires (a) a university-level degree in the relevant field; or (b) a secondary school graduate supplemented by certain skills and credentials on the relevant functions (e.g. trained bank officer, bank sales and investments, investment advisory services, specialised financial services, etc.) or a High Banker's Certificate issued by the Hungarian Banking Association or other qualification recognised as equivalent; or (c) a certificate of capital market examination issued by the Central Bank of Hungary (MNB)⁶¹.

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**)⁶². Therefore, Irish regime does not require a **minimum formal education** prior to attaining a qualification considered appropriate, but it establishes a minimum academic benchmark that appropriate qualifications must fulfil to be recognised and included in the list⁶³.

Special attention should be paid to **Italy's regime**, as it has established a modulated mix of education and professional experience, so that **the higher the educational level is, the shorter the experience requested can be** (and vice versa)⁶⁴. This use of professional experience to modify the knowledge requirements might indicate a failure to comply with ESMA Guidelines. Furthermore, it results in a complex system that could handicap free movement of staff within EU.

⁶⁰ See Section 14b of Act No. 256/2004 Sb., on Capital Market Business, as amended.

⁶¹ According to answers received to the questionnaire.

⁶² See Central Bank of Ireland's Minimum Competency Code 2017, Part 2, p. 18.

⁶³ See Central Bank of Ireland's Minimum Competency Code 2017, Part 3, Section 3.3, p. 21.

⁶⁴ See Articles 79-80 of Regolamento recante norme di attuazione del decreto legislativo 24 febbraio 1998, n. 58 in materia di intermediari, adottato con dalla Consob con delibera n. 20307 del 15 febbraio 2018, available at: http://www.consob.it/documents/46180/46181/reg_consob_2018_20307.pdf/776d11cf-5df4-4079-8af3-a0f1335b7593.

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»⁶⁵. Therefore, **qualification providers may eventually establish certain minimum formal education requirements**.

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 clearly included in ESMA Guidelines**. 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).

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: 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.

According to our research, there are several EU Member States in which no criteria have been defined or their definition has been left to firms (e.g. France, Hungary, Germany⁶⁶, Estonia⁶⁷). Some of them, however, require passing a final examination to have the learning outcomes assessed (e.g. the Czech Republic, the Netherlands⁶⁸, Finland⁶⁹). Moreover, in the **Czech Republic** questions of this final examination are prepared by the Czech National Bank (CNB)

⁶⁵ See FCA’s TC Appendix 5.1.1G, §4.

⁶⁶ According to answers received to the questionnaire.

⁶⁷ According to answers received to the questionnaire.

⁶⁸ According to answers received to the questionnaire.

⁶⁹ According to answers received to the questionnaire.

and included in a central database for all accredited bodies and institutions⁷⁰. CNB has also issued detailed rules for bodies and institutions to be granted accreditation by the CNB to organise vocational examinations⁷¹.

In **Austria**, staff shall acquire knowledge and competence by completing **training courses** addressing the content stated in ESMA Guidelines (§§ 17 and 18, literally reproduced in FMA Circular), and shall prove to have achieved the required knowledge and competence by means of **documentation confirming to have passed an exam** on that content. 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’⁷².

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, that can be provided by the firm or by an external training provider, must contain three modules: general knowledge defined by MNB (module 1), sound knowledge of changes in legislation and of products and services (module 2) and knowledge required for the recommendation of financial instruments and services and assessment skills (module 2)⁷³. 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.

With respect to EU Member States in which some criteria have been defined, most of them admit both classroom or distance learning (e.g. Italy, Luxembourg⁷⁴, Poland, Portugal⁷⁵,

⁷⁰ See Section 14e of Act No. 256/2004 Sb., on Capital Market Business, as amended. Further details on the examinations characteristics are stated in Article 8 of Decree No. 319/2017 of 21 September 2017 on professional qualification for distribution on the capital market.

⁷¹ See Sections 14c to 14e 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.

⁷² See FMA Circular, p. 9, § 38.

⁷³ See Section 5 of 37/2017. (XII.27.) MNB Decree about requirements for professional skills and competences for staff providing investment advice or information on financial instruments, investment services or ancillary services.

⁷⁴ See § 2 of Circular CSSF 17/670 of 31 October 2017.

⁷⁵ See Article 2.5 of the Projeto de Regulamento da CMVM que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares.

Spain⁷⁶), including other learning facilities as videoconference, webinar and e-learning (e.g. Italy⁷⁷). Nevertheless, in cases which passing a final examination is required, it is usual that it must be on-site (e.g. Portugal⁷⁸ and Italy⁷⁹). Generally, both internal and external training are admitted (e.g. Italy⁸⁰, Luxembourg, Poland, Portugal⁸¹, Spain), and some of them expressly admit both internal or external evaluation and certification (e.g. Portugal⁸²).

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 CSSF⁸³. 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 training⁸⁴. 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 organisations⁸⁵.

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 Portugal⁸⁶). In the case of **Luxembourg's**

⁷⁶ 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.

⁷⁷ See Article 79.7 and 80.3 of Regolamento recante norme di attuazione del decreto legislativo 24 febbraio 1998, n. 58 in materia di intermediari, adottato con dalla Consob con delibera n. 20307 del 15 febbraio 2018.

⁷⁸ See Article 2.6 of the Projeto de Regulamento da CMVM que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares.

⁷⁹ See Article 79.9 and 80.3 of Regolamento recante norme di attuazione del decreto legislativo 24 febbraio 1998, n. 58 in materia di intermediari, adottato con dalla Consob con delibera n. 20307 del 15 febbraio 2018.

⁸⁰ See Article 79.10 and 80.3 of Regolamento recante norme di attuazione del decreto legislativo 24 febbraio 1998, n. 58 in materia di intermediari, adottato con dalla Consob con delibera n. 20307 del 15 febbraio 2018.

⁸¹ See Article 2.5 of the Projeto de Regulamento da CMVM que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares.

⁸² See Article 2.6 of the Projeto de Regulamento da CMVM que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares.

⁸³ See § 6 of Circular CSSF 17/665 of 31 July 2017.

⁸⁴ See § 1 of Circular CSSF 17/670 of 31 October 2017.

⁸⁵ See § 2 of Circular CSSF 17/670 of 31 October 2017.

⁸⁶ 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 Projeto de Regulamento da CMVM que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão

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**⁸⁷. Likewise, **Italy's** regime establish that vocational training requires attending to training courses of **at least 60 hours**, without neither **differentiating between** the training for providing **advice** and for giving **information**⁸⁸. There are also countries where the volume of the training programme is not defined (e.g. Poland).

According to the assessment conducted, **only Ireland and United Kingdom demand external training**.

United Kingdom's regime recognise 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)⁸⁹. In this case, firms should select a qualification from the provided **list**⁹⁰ considering appropriate for each regulated activity⁹¹. **This general regime has been amended to meet ESMA Guidelines** so, in addition, staff providing relevant services must demonstrate to **possess knowledge and competence**⁹² by having appropriate experience and having attained an **appropriate qualification that meets the criteria stated in ESMA Guidelines**⁹³.

Besides, FCA's TC sets **criteria for assessment of qualification providers and for qualifications to be included in the list**⁹⁴. Among the criteria for assessing a qualification provider, FCA's TC include «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»⁹⁵. 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,

informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares; 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.

⁸⁷ See § 2 of Circular CSSF 17/670 of 31 October 2017.

⁸⁸ See Article 79.5 and 80.3 of Regolamento recante norme di attuazione del decreto legislativo 24 febbraio 1998, n. 58 in materia di intermediari, adottato con dalla Consob con delibera n. 20307 del 15 febbraio 2018.

⁸⁹ See FCA's TC 2.1.1R.

⁹⁰ See FCA's TC Appendix 4.

⁹¹ See FCA's TC Appendix 1.

⁹² See SYSC 5.1.5ABR.

⁹³ See FCA's TC 4.1.4R.

⁹⁴ See FCA's TC Appendix 5.

⁹⁵ See FCA's TC Appendix 5.1.1G, § 3.

among other issues, to provide «the learning materials» and «details of expected learning hours or any other similar arrangements»⁹⁶. Consequently, there is not an express separation between trainer and evaluator in United Kingdom's regime. Notwithstanding, **firms must obtain from an accredited body⁹⁷ independent verification** (a statement of professional standing) of the firm's compliance with the requirement that retail investment advisers attain each module of appropriate qualification⁹⁸.

In the case of **Ireland**, 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 in § 17 and § 18 of ESMA Guidelines. 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 evaluator⁹⁹**.

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**.

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: 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).

Several EU Member States admit both internal or external, and classroom or distance CPD training (e.g. Spain¹⁰⁰), and some of them require passing examinations from time to time

⁹⁶ See FCA's TC Appendix 5.1.1G, § 4.

⁹⁷ 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.

⁹⁸ See FCA's TC 2.1.27R.

⁹⁹ See Central Bank of Ireland's Minimum Competency Code 2017, Part 2, p. 18, and Part 3, p. 21.

¹⁰⁰ 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.

(e.g. Italy¹⁰¹, the Netherlands¹⁰²). Moreover, **huge divergencies have been found in the CPD training duration**. For instance, 15 hours per year of CPD are required in Austria¹⁰³ and Ireland¹⁰⁴; 30 hours per year are required in Italy¹⁰⁵; and 30 hours and 20 hours per year (for providing advice and giving information, respectively) are required in Portugal¹⁰⁶ and Spain¹⁰⁷. 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. the Czech Republic) do not expressly require any CPD at all.

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 period¹⁰⁸. 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 sessions¹⁰⁹. However, retail investment advisers should complete no less than 21 hours of structured CPD activities¹¹⁰. In any case, all CPD should be measurable and capable of being independently verified by an accredited body¹¹¹. Moreover, firms must ensure that retail investment advisers issue annually a written declaration that they complied with APER or COCON (as applicable) and with CPD requirements in the preceding 12 months¹¹²; and must obtain from an

¹⁰¹ See Article 81.1 of Regolamento recante norme di attuazione del decreto legislativo 24 febbraio 1998, n. 58 in materia di intermediari, adottato con dalla Consob con delibera n. 20307 del 15 febbraio 2018.

¹⁰² According to answers received to the questionnaire, CPD training could be borne by the firm but must periodically assessed through external exams every 3 years. DSI formulates requirements for CPD which certified professionals must meet (see Articles 2 and 4 of DSI General Regulations, 1 January 2018).

¹⁰³ See FMA Circular, p. 9, § 42.

¹⁰⁴ See Central Bank of Ireland’s Minimum Competency Code 2017, Part 2, p. 18.

¹⁰⁵ See Article 81.1 of Regolamento recante norme di attuazione del decreto legislativo 24 febbraio 1998, n. 58 in materia di intermediari, adottato con dalla Consob con delibera n. 20307 del 15 febbraio 2018.

¹⁰⁶ See Article 2.3 of the Projeto de Regulamento da CMVM que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares.

¹⁰⁷ 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.

¹⁰⁸ See FCA’s TC 2.1.15R.

¹⁰⁹ See FCA’s TC 2.1.20G and 2.1.21G.

¹¹⁰ See FCA’s TC 2.1.16G.

¹¹¹ See FCA’s TC 2.1.22G (6).

¹¹² See FCA’s TC 2.1.26R

accredited body independent verification (a statement of professional standing) of the firm's compliance with CPD and annual declarations requirements¹¹³.

Ireland's regime provides that qualifications aiming to obtain recognition and be included in the list (Appendix 4 of the Central Bank's Minimum Competency Code) should include ongoing CPD requirements¹¹⁴. **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 2012¹¹⁵, 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 hours¹¹⁶ 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 requirement¹¹⁷.

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

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 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).

¹¹³ See FCA's TC 2.1.27R.

¹¹⁴ See Central Bank of Ireland's Minimum Competency Code 2017, Part 3, p. 21.

¹¹⁵ See Central Bank of Ireland's Minimum Competency Code 2017, Part 1, p. 13.

¹¹⁶ 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.

¹¹⁷ See Central Bank of Ireland's Minimum Competency Code 2017, Part 1, p. 14.

Accordingly, 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.

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 **the Netherlands¹¹⁸ and Luxembourg** have risen the minimum required to **12 months¹¹⁹**. On the other hand, there are certain EU Member States (e.g. the Czech Republic, Finland¹²⁰) that do not expressly require any experience at all.

In **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 months¹²¹. Similarly, **Ireland** has also included this same provision in its regime¹²².

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. For instance, 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 months¹²³.

However, **some EU Member States have cut down the period of supervision**, as in the case of **Austria¹²⁴**, 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 *knowledge*); **Hungary¹²⁵**, where the maximum period is **1 year**; or **France¹²⁶ and Germany¹²⁷**, where the maximum period is especially short: **6 months**.

¹¹⁸ According to answers received to the questionnaire. ESMA Guidelines requirements on minimum work experience are outside of DSI's scope.

¹¹⁹ See § 5 of Circular CSSF 17/665 of 31 July 2017.

¹²⁰ According to answers received to the questionnaires.

¹²¹ See FCA's TC 4.1.4R in relation to amendment of TC 2.1.1R (1).

¹²² See Central Bank of Ireland's Minimum Competency Code 2017, Part 2, p. 18.

¹²³ See FCA's TC 4.1.4R in relation to amendment of TC 2.1.2R.

¹²⁴ See FMA Circular, p. 9, § 41.

¹²⁵ See Section 9 (2) of 37/2017. (XII.27.) MNB Decree about requirements for professional skills and competences for staff providing investment advice or information on financial instruments, investment services or ancillary services.

¹²⁶ See Position-recommandation AMF L'évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018, Section 2.2, p. 5.

¹²⁷ According to answers received to the questionnaire.

Moreover, in the Czech Republic's regime, no provision on supervision is included, but there is a two-year leeway to fulfil the requirement of the compulsory exam. In the meanwhile, staff providing relevant services can sign a declaration of compliance with professional standards of which CNB may request evidence (e.g. e-learning, courses, test, etc.)¹²⁸.

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 to ensure 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 our research, most EU Member States of which we have data admit both internal or external review of staff member's appropriate qualification (e.g. Austria¹²⁹, Estonia¹³⁰, France¹³¹, Germany¹³², Hungary¹³³, Italy¹³⁴, Luxembourg¹³⁵, Poland¹³⁶, Spain¹³⁷,

¹²⁸ According to answers received to the questionnaire.

¹²⁹ See FMA Circular, p. 9, § 42.

¹³⁰ According to answers received to the questionnaire.

¹³¹ See Position-recommandation AMF L'évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018, Section 2.2, p. 5.

¹³² According to answers received to the questionnaire.

¹³³ Hungary's regime requires checking of staff's general knowledge at least every 5 years, and staff's special knowledge (modules 2 and 3) at least annually. See Section 8 of 37/2017. (XII.27.) MNB Decree about requirements for professional skills and competences for staff providing investment advice or information on financial instruments, investment services or ancillary services.

¹³⁴ See Article 81.1 of Regolamento recante norme di attuazione del decreto legislativo 24 febbraio 1998, n. 58 in materia di intermediari, adottato con dalla Consob con delibera n. 20307 del 15 febbraio 2018.

¹³⁵ See § 6 of Circular CSSF 17/665 of 31 July 2017.

¹³⁶ In Poland the distinction is not expressly mentioned in the underlying ordinance which puts the responsibility for assuring the annual review on the firm.

¹³⁷ 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.

United Kingdom¹³⁸). However, while several EU Member States require only internal review (e.g. Ireland¹³⁹, the Netherlands¹⁴⁰), **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.

¹³⁸ See FCA's Policy Statement PS17/14, July 2017, p. 117.

¹³⁹ See Central Bank (Supervision and Enforcement) Act 2013 (Section 48 (1)) Minimum Competency Regulations 2017, § 13.

¹⁴⁰ According to answers received to the questionnaire.

CONCLUSIONS AND PROPOSALS

Following analysis of EU Member States legal framework and considering input from answers received to the questionnaire, the following conclusions and proposals can be drawn:

- It is advisable that the **EU Member States' relevant rules on knowledge and competence** would be compulsorily translated to a **language customary in the sphere of international finance**¹⁴¹ –usually, **English**–, without prejudice of the legitimate use of national languages and with the sole purpose of facilitating the assessment of the consistent implementation of ESMA Guidelines as well as the access to the relevant information by the concerned firms and staff, enabling their eventual relocation.
- The requirement that staff providing relevant services meet **business ethics standards** is **one of the elements of ESMA Guidelines**. Therefore, it is essential that ESMA clarifies its demand as part of an appropriate qualification and **reviews its rendering** in several translated versions of the Guidelines, so it would not be confused with similar terms with different meaning in other languages.
- The requirement of a **minimum previous formal education** to access a compliant qualification constitutes a reasonable measure that **should have been clearly included in ESMA Guidelines**. The random adoption of this prerequisite only by some EU Member States might hinder the achievement of a level playing field in this regard and might constitute a challenge for cross-border firms. A feasible solution for this inconsistency could be the general inclusion of this prerequisite in ESMA Guidelines with reference to EQF framework.
- 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 divergencies found constitute a challenge for the fulfilment of ESMA requirements within EU Member States, especially in the case of cross-border firms¹⁴², which must comply with different benchmarks in each of their branches. Furthermore, staff providing relevant services would find difficulties to

¹⁴¹ Terminology used in Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

¹⁴² In fact, EFPA has already received comments from cross-border firms showing their concerns about the difficulties in meeting ESMA requirements on knowledge and competence within their European branches due to the described divergencies in its implementation.

relocate in other EU Member States due to these divergencies. 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.

- One of the key elements to guarantee an appropriate qualification is the effective **separation between training and evaluation**. According to our research, further improvement is needed on this matter within EU Member States.
- Fulfilment of ESMA Guidelines requirement on **CPD** by EU Member States shows a **wide disparity**. CPD being one of the main measures to ensure an appropriate and updated qualification of staff providing relevant services, **it appears advisable to review the criteria** that meet ESMA requirement on **CPD training and evaluation**. Moreover, ESMA might **clarify** that a **qualification should not be considered appropriate if it does not entail and require CPD**.
- 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 for staff providing relevant services in terms of legal certainty and ease of relocation**. Although **more rigorous approaches** are welcomed, their adoption should be **coordinated and properly explained** to prevent difficulties in both firms' and staff 's eventual relocation.
- Finally, as for the review of staff's appropriate qualification, **external review of staff's qualification might be advisable to bring more objectivity and rigour to this element**, without prejudice of firm's ultimate responsibility.
- Whereas Article 90 of MiFID II 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, in view of the results of this research, we would like to suggest that **ESMA commits a broader and deeper study on the implementation of its Guidelines** for the assessment of knowledge and competence, in order to facilitate ESMA's supervisory task, and to enhance **supervisory convergence**. Therefore, ESMA might undertake a review of its Guidelines by 3 March 2019 considering their effectiveness and appropriateness. The revision could include the following:

- an assessment of EU Member States fulfilment of ESMA Guidelines (§ 14) requisite of business ethics standards;
 - an analysis of minimum previous formal education requirements, based on the common reference of EQF framework, that might condition access to an appropriate qualification;
 - an assessment of the characteristics and European qualification standards that should serve as common tools to provide transparency and comparability to qualifications and offer a strong measure for implementing the required rule of proportionality;
 - an assessment of the compulsory separation between training and evaluation;
 - an assessment of the criteria that CPD training and evaluation must fulfil to be considered that they comply with ESMA Guidelines requirement;
 - an assessment of the compulsory requirement of CPD as part of qualifications programmes to be considered appropriate;
 - an analysis of the implications 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; and
 - an assessment of the advisability of requiring an external review of staff's qualification.
- Moreover, ESMA might organise a **Public Hearing** on knowledge and competence requirements to emphasise its importance, clarify its interpretation and gather the stakeholders' opinion after the first year of application of its Guidelines for the assessment of knowledge and competence.

ANNEX. - NATIONAL MiFID II TRANSPOSITION RULES ON KNOWLEDGE AND COMPETENCE

1. AUSTRIA

- FMA Circular ‘The criteria for the Assessment of Knowledge and Competence of Investment Advisors and Persons providing Information about Investment Products (Article 55 WAG 2018), 21 August 2017

2. THE 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. FRANCE

- Position-recommandation AMF L’évaluation des connaissances et des compétences (DOC-2018-01), 3 janvier 2018

4. HUNGARY

- 37/2017. (XII.27.) MNB Decree about requirements for professional skills and competences for staff providing investment advice or information on financial instruments, investment services or ancillary services

5. IRELAND

- Central Bank (Supervision and Enforcement) Act 2013 (Section 48 (1)) Minimum Competency Regulations 2017
- Central Bank of Ireland Minimum Competency Code 2017

6. ITALY

- Regolamento intermediari Adottato con delibera n. 20307 del 15 febbraio 2018

7. LUXEMBOURG

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

8. THE NETHERLANDS

- General Regulation DSI, 1 January 2018

9. POLAND

- Ustawa z dnia 1 marca 2018 o zmianie ustawy o obrocie instrumentami oraz niektórych innych ustaw
- Rozporządzenie Ministra Finansów z dnia 29 maja 2018 r., w sprawie szczegółowych warunków technicznych i organizacyjnych dla firm inwestycyjnych, banków, o których mowa w art. 70 ust. 2 ustawy o obrocie instrumentami finansowymi, i banków powierniczych

10. PORTUGAL

- Projeto de Regulamento que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares
- Documento de Consulta Pública da CMVM nº 3/2017 Regulamento que visa definir os conteúdos mínimos a dominar pelos colaboradores de intermediários financeiros que prestam serviços de consultoria para investimento ou dão informações a investidores sobre produtos financeiros e serviços de investimento, principais ou auxiliares
- Nota Justificativa do Projeto de Regulamento
- Relatório da consulta pública da CNVM nº 3/2017 Projeto de Regulamento
- Anteprojeto de diploma de transposição da DMIFII e RMIF
- Documento de Consulta Pública CNSF nº 1/2016 Anteprojetos de transposição da DMIF II / RMIF
- Relatório da consulta pública CNSF nº 1/2016, Anteprojetos de transposição da DMIF II / RMIF

11. 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

12. UNITED KINGDOM

- FCA's Senior Management Arrangements, Systems and Controls sourcebook ('SYSC'), Chapter 5
- FCA's Training and Competence sourcebook ('TC')