Report

on National Measures regarding Disclosure Requirements and Professional Requirements for Unit-Linked Life Insurance Products, which are additional to the Minimum Requirements of the CLD and IMD
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List of Abbreviations

CCP  CEIOPS’ Committee on Consumer Protection
IM  Insurance Intermediary
IU  Insurance Undertaking
ULLI  Unit-Linked Life Insurance
Executive Summary

This report is an own-initiative survey by the members of the Committee on Consumer Protection ("the CCP") of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). It looks at national measures on disclosure requirements and professional requirements regarding unit-linked life insurance ("ULLI") Products, which are considered additional to the minimum requirements of the Consolidated Life Insurance Directive (Directive 2002/83/EC) ("the CLD") and the Insurance Mediation Directive (Directive 2002/92/EC) ("the IMD"). It also refers to relevant provisions of the Markets in Financial Instruments Directive (MiFID) Level 1 text (hereafter "MiFID) and the Implementing Directive at Level 2 (hereafter “MIFID IM”), specifically to see to what extent MiFID mirrors those national measures, which go beyond the CLD and the IMD.

This report is simply a mapping exercise and is not intended to evaluate existing measures or to contain implicit or explicit policy recommendations for the future. It is also important to note that this mapping exercise was initiated before, and independently of, the European Commission’s recently published “Communication on Packaged Retail Investment Products”.

The report is divided into four sections:

(i) “Pre-contractual information” requirements, relating to (a) disclosure about the “person” (the insurance undertaking (hereafter “IU”), insurance intermediary (hereafter “IM”) or other legal person), proposing and selling ULLI products; (b) disclosure about the ULLI product (see below issue of definition of ULLI products), including the conditions and content of such disclosure; and (c) information about the customer buying the ULLI product;

(ii) Requirements relating to information to be provided to the customer during the contract;

(iii) “Ongoing requirements” incumbent on the IM, IU or other before and during the contract; and

(iv) "Professional requirements”, concerning fit and proper requirements (good repute, training & competence etc) relating to the persons within the IU, the IM or other entity proposing and selling ULLI products.

The following is a summary of the main findings under each of these sections:

I. PRE-CONTRACTUAL INFORMATION

I.1. Disclosure about the PERSON proposing and selling ULLI products

- In the vast majority of Member States, both IUs and IMs are authorised to offer ULLI products in the relevant national jurisdiction. This is particularly relevant given that the provisions of the IMD do not currently apply to sales of ULLI products directly by IUs;

- With regards to IUs, very few Member States make a clear distinction between service-related and product-related charges. In the majority of Member States, the same disclosure requirements apply to both sets of charges;

- With regards to IMs, Member States make a clearer distinction between service-
related and product-related charges to take into account the specificities of the provision of advice by the IM. The requirement for information on costs to be disclosed obligatorily or only at the request of the customer varies according to individual national requirements;

- The majority of the national additional measures quoted in this section are mirrored in the provisions of MIFID and MIFID IM; and
- There are very few national “non-cost-related” disclosure requirements, which go beyond the scope of the CLD and the IMD.

I. 2. Disclosure about the ULLI PRODUCT

I.2.1. Conditions of disclosure

- There seem to be a number of common national additional measures relating to the conditions of product disclosure for IUs, which, but for the exclusion of IUs from the IMD, would not be considered “additional” because they would not go beyond the provisions of the IMD. This probably explains why there are no common additional measures for IMs. The national additional requirements for IUs are often mirrored very closely by corresponding provisions in MiFID IM; and
- There are very few unique, national additional measures in this area.

I.2.2. Content of disclosure

- What is very striking in this section, relating to disclosure requirements pertaining to the content of the ULLI product, is that, in the majority of cases, common national additional measures apply to both IUs and IMs. This is particularly relevant given that the requirements of the CLD are far more prescriptive in this area than the IMD;
- The majority of the common additional measures in question tend to be additional to the CLD in the sense that they are slightly more detailed than the CLD. They are often, in any event, mirrored by comparable provisions in MiFID IM; and
- In addition, there are a striking number of detailed additional measures, which are unique to individual Member States, in this section, suggesting that Member States have sought to be more prescriptive than the terms of the CLD to, for example, guarantee consumer protection.

I.3. Information about the customer

- It is already recognised that the existing legal framework relating to “information about the customer” under the IMD is extremely limited (in stark contrast to the detailed corresponding provisions of MiFID and MiFID IM);
- What is particularly relevant, however, is that there seems to be little or no commonality with regard to the additional measures that Member States have enacted relating to “information about the customer”; and
- Those unique national additional measures that do exist, are mirrored, to some extent, under MiFID and MiFID IM, particularly with regard to the concept of “risk
transfer” (where the policyholder accepts the assumption of risk where he/she chooses not to disclose sufficient information) and “client categorisation”. This seems to indicate that some Member States have chosen to extend (or replicate) the provisions of MiFID to customer information requirements.

II. INFORMATION DURING THE CONTRACT

- The existing legal framework is very limited in its effects - “information requirements throughout the term of the contract” are only properly addressed under the CLD and thus it is no surprise that any common additional measures only apply to IUs;

- However, the provisions of the CLD (with regard to this issue) are minimum harmonising, thus it is also unsurprising that, in almost all Member States, information duties of the IU have a broader scope than the CLD. These information duties also do not bear any direct comparison with MiFID or MiFID IM;

- Almost all Member States use the same additional requirements for the IU. In addition, it is common practice for the IU to inform the policyholder annually about specific data; and

- The scope of the data is often substantially different for each Member State (going well beyond the notion of “state of bonuses” under the CLD) as a large number of Member States have very unique additional measures in this area.

III. ONGOING REQUIREMENTS (before and during the contract)

- The existing legal framework in this area largely relates to the on-going provision of information by IUs and IMs to customers relating to complaints-handling and out-of-court dispute settlement. As far as complaints-handling mechanisms are concerned, the provisions of MiFID are far more prescriptive than those in the CLD and IMD;

- The requirements referred to in this section are not specific for Unit-Linked Life Insurance Products - they are common to all Life Insurance products (CLD) and/or to all the products which are offered by an insurance intermediary (IMD);

- Some national additional measures described by Member States might be similar in other Member States but were not interpreted as “additional” as it is extremely difficult to conclude that a certain provision is “above the minimum requirements of the CLD and IMD” because those minimum requirements are drafted in such a general manner; and

- Aside from complaints-handling and out-of-court dispute settlement measures, a small number of bespoke individual national measures also exist.

IV. PROFESSIONAL REQUIREMENTS

- The existing legal framework is far more prescriptive for IMs, operating under the IMD than for IUs under the CLD. The provisions in MiFID do not, however, go further than those contained in the IMD and CLD;

- Interestingly, the general Professional requirements have to be fulfilled by all IUs and IMs, not only by those offering ULLI Products; and
National additional requirements, in this area, are bespoke, given that there is no evidence of any common additional measures – Member States have tended to supplement the provisions of the CLD and IMD with far more prescriptive, exacting requirements. This is particularly evident in relation to national additional measures relating to IMs; perhaps to counteract past concerns in national jurisdictions over the fitness and propriety of IMs and perceived deficiencies in training and competence.
Introduction

Background

1. This report is an own-initiative survey by the members of the Committee on Consumer Protection ("the CCP") of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). It follows on from CEIOPS’ response\(^1\) to the European Commission’s Call for Evidence on “substitute retail investment products” published in October 2007\(^2\). In its response, CEIOPS Members & Observers ("CEIOPS Members") stated, in relation to national product disclosure requirements, the following on page 9 of that response:

"The requirements concerning unit-linked life insurance contracts were nevertheless upgraded at national level in sixteen Member States, in line with the [Consolidated] Life Insurance Directive allowing Member States to require additional information if it is necessary for a proper understanding by the policyholder of the essential elements of the commitment….The above evaluation is only based on the disclosure requirements contained in the [Consolidated] Life Insurance Directive and the IMD, and does therefore not reflect the situation existing at national level where additional requirements were introduced by national law”.

At the meeting of the CCP on 24\(^{th}\) September 2008, Members agreed to carry out an internal fact-finding exercise of the aforementioned national disclosure requirements, and also professional requirements, in relation to unit-linked life insurance ("ULLI") products, which are considered additional to the minimum requirements of the Consolidated Life Insurance Directive (Directive 2002/83/EC) (“the CLD”)\(^3\) and the Insurance Mediation Directive (Directive 2002/92/EC) (“the IMD”).

This report is, therefore, simply a mapping exercise and is not intended to evaluate existing measures or to contain implicit or explicit policy recommendations for the future. It is also important to note that this mapping exercise was initiated before, and independently of, the European Commission’s recently published “Communication on Packaged Retail Investment Products”\(^4\).

Scope and Structure of the report

2. This report looks at national measures on disclosure requirements and professional requirements regarding ULLI Products, which are considered additional to the minimum requirements of the CLD and IMD. It also refers to relevant provisions of the Markets in Financial Instruments Directive (MiFID) Level 1 text and the Implementing

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\(^{1}\) CEIOPS responded to the Commission’s Call for Evidence after receiving replies given by its Members and Observers to an internal survey organised in 2006-2007 on the issue of substitute or competing products.

\(^{2}\) Call For Evidence - Need for a coherent approach to Product Transparency and Distribution Requirements for “Substitute” Retail Investment Products? European Commission DG Markt – G4. The purpose of the Call for Evidence was to establish whether there is a real and significant risk to investor protection resulting from variations in EU rules on product disclosure and distribution for different types of retail investment product.

\(^{3}\) The provisions of the CLD relating to information disclosure requirements have been updated in the Solvency II Directive (Article 183), but these changes have not been taken into account for the purposes of this Report.

Directive at Level 2, specifically to see to what extent those national measures (which go beyond the CLD and the IMD) mirror provisions in MiFID. Drawing this comparison with MiFID is only intended to be for information purposes.

As regards the "national measures" the report considers, these are official measures laid down in primary (e.g. Acts of Parliament) and secondary (e.g. Decrees, Orders and Statutory Instruments), domestic legislation, which have varying binding effects. Self-regulatory initiatives are not considered for the purposes of this Report5.

As regards what is considered an “additional” measure in this report, it should be pointed out that, in some cases, measures are considered “additional”, not only because they go beyond the minimum requirements of the CLD or IMD to a material extent, but also in cases where they simply complement or provide some more detail to those requirements.

As regards "disclosure requirements", the report categorises these along the following lines:

(i) “Pre-contractual information”6 requirements, dividing these into three sections based on:

- Disclosure about the "person" (the insurance undertaking (hereafter "IU"), insurance intermediary (hereafter “IM”) or other legal person), proposing and selling ULLI products;
- Disclosure about the ULLI product (see below re issue of definition of ULLI products), including the conditions and content of such disclosure; and
- Information about the customer buying the ULLI product.

(ii) Requirements relating to information to be provided to the customer during the contract; and

(iii) So-called “Ongoing requirements” incumbent on the IM, IU or other, before and during the contract.

As regards “professional requirements”, the report considers the fit and proper requirements (good repute, training & competence etc) relating to the persons within the IU, the IM or other entity proposing and selling ULLI products.

As regards the definition of ULLI products, this report does not purport to establish a generic definition as definitions may vary according to national requirements. However, for the purposes of this report, ULLI products have simply been defined according to the provisions of the CLD7 i.e. as insurance contracts whose “benefits...are directly linked to the value of units in a UCITS or of assets contained in

5 Although self-regulatory initiatives, such as Industry codes or standardised product documentation, are excluded from the scope of this report, it is nevertheless recognised that, in some cases, primary and secondary national legislation may be complemented by self-regulatory initiatives, which are endorsed by national supervisors and accepted by the majority of the national insurance sector. In these circumstances, such initiatives can be considered binding on those who have subscribed to them and national courts may take them into account when complaints are made by policyholders about insurers failing to comply with primary and secondary legislation. For example, in one Member State, the Association of IUs and the various Federations of brokers have elaborated standardised documents that help IMs to fulfil their information disclosure duties towards customers, and the national supervisor refers to these documents as “good practice”.

6 N.B. This report does not cover national additional measures on “marketing communications” or “advertising” i.e. communications that are not directed at one specific person or group of persons acting jointly (unless those communications are part of an organised marketing campaign). Its principal purpose is to cover information disclosures, which are part of a contractual offer to a customer to purchase a ULLI product.

7 See Article 25(1) and (2), CLD
an internal fund held by the insurance undertaking, or to a share index or the value of units representing some other reference value”. It should also be noted that, in a limited number of cases, the national additional measures referred to are not specific to ULLI Products, but are common to all Life Insurance products and/or to all products offered by an IM due to the fact that it is impossible to clearly distinguish the treatment of ULLI products and other Life Insurance products in the relevant national additional measures.

3. The report is structured along the following lines: In each individual section, CEIOPS Members have first set out the applicable legal framework under the CLD and IMD; then, they have provided information about “common national additional measures” relating to both IUs and IMs and linked these with the provisions in MiFID Level 1 and 2; and finally, other individual members’ bespoke national additional measures in relation to IUs and IMs are listed.

4. The report is based on the contributions received in Spring 2009 from 26 CEIOPS Members⁸.

⁸ Four CCP Members did not contribute to this report.
I. PRE-CONTRACTUAL INFORMATION

I.1. Disclosure about the PERSON proposing and selling ULLI products

1. Legal framework

(1) CLD

**Article 36 - Information for policyholders**
1. Before the assurance contract is concluded, at least the info listed in Annex III(A) shall be communicated to the policyholder

**Annex III(A)**
(a) The name of the undertaking and its legal form
(b) The name of Member State in which the head office and, where appropriate, the agency or branch concluded the contract is situated.
(c) The address of the head office, and, where appropriate, the agency or branch concluding the contract.

(2) IMD

**Articles 12(1)(a), (b), (c) and (d)**

Information provided by the insurance intermediary:

1. Prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal thereof, an insurance intermediary shall provide the customer with at least the following information:

(a) His identity and address;
(b) The register in which he has been included and the means for verifying that he has been registered;
(c) Whether he has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking;
(d) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the insurance intermediary.

**Articles 12(1)(i),(ii) and (iii)**

In addition, an insurance intermediary shall inform the customer, concerning the contract that is provided, whether:

(i) he gives advice based on the obligation in paragraph 2 to provide a fair analysis, or

(ii) he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall, at the customer's request provide the names of those insurance undertakings, or

(iii) he is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give
advice based on the obligation in paragraph 2 to provide a fair analysis. In that case, he shall, at the customer's request provide the names of the insurance undertakings with which he may and does conduct business.

In those cases where information is to be provided solely at the customer's request, the customer shall be informed that he has the right to request such information.

Note: The IMD allows Member States to maintain or adopt stricter provisions regarding these information requirements, "provided that such provisions comply with Community law" (Article 12(5) IMD).

1. ➔ Who is allowed to offer ULLI products in the relevant jurisdiction: the IU, the IM or other legal person?

<table>
<thead>
<tr>
<th>IU (26 Member States)</th>
<th>IM (26 Member States)</th>
<th>Other legal person (number of Member States)</th>
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<td></td>
<td>Investment advisor, Banks as intermediaries (1)</td>
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<td></td>
<td>Banks acting as tied agents for IUs (1)</td>
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<td>Investment Business Firms, Credit Institutions (1)</td>
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<td>Investment firms (1)</td>
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<td>Banks, investment advisors or investment firms (management companies) can sell such the products only as dependent insurance intermediaries.</td>
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<td>Banks acting as intermediaries (3)</td>
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<td>Banks (2)</td>
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<td>Financial intermediaries, authorized stock brokers and one company registered under a national company Register (1)</td>
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2. Common additional measures

This section analyses, among other things, national additional measures relating to disclosure of costs and associated charges by the person proposing and selling ULLI products. Costs for ULLI products are typically structured along the following lines:

(i) An initial establishment charge or allocation rate (buying units in funds chosen by the customer) – usually a percentage of the initially invested premium and each additional investment the customer makes, covering, *inter alia*, the setting-up costs;

(ii) An Annual Fund Management Charge i.e. a percentage deducted from each fund in which an investor invests, used to cover charges associated with managing the investment options the customer chooses. This may also include Annual Adviser Remuneration if, for example, an IM takes commission for providing initial and on-going advice to the customer. N.B.

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9 In one Member State, although IUs are not prohibited by law from offering ULLI products; in practice, such products are offered only by IMs. In another, IUs are only allowed to incorporate funds in unit-linked life insurance business, which are either issued under the law of an EU/EEA country or at least supervised by a supervisory authority corresponding to the rules of the domestic supervisor.
Such commission may or may not have been agreed with the customer up front; and

(iii) Additional charges such as Early Cash-In/Surrender Charges or due to tax/ regulatory changes.

Items (i) and (iii) tend to be product-related costs as they are directly linked to the type/amount of the investment chosen by the customer, whereas item (ii) contains elements of both product-related costs and service-related costs because they cover costs related to underlying assets and costs related to financial advice provided by an IM.

N.B. Although this section of the report is intended to cover only national additional measures relating to disclosure of costs by “the person proposing and selling ULLI products” (as opposed to the following section, which deals with disclosure of costs “related to the ULLI Product” (section I.2)), it has not been possible for CCP members to make a clear distinction in their national rules between disclosure of service-related costs and product-related costs - national approaches on this issue vary to such a large extent that any attempts to draw such a distinction would prove to be wholly artificial. Therefore, in the section below, it has been indicated, in individual cases where possible, which national disclosure requirements relate specifically to: (i) “costs in connection with the service”, and (ii) both “costs in connection with the service” and “costs in connection with the product”.

(1) Regarding IUs:

a. In seven Member States, when IUs have to give information on costs, it covers both costs in connection with the service” and “costs in connection with the product”. In two Member States, legislation is based, in this respect, on the precept that all relevant information shall be given to customers. In one Member State, a national Consumer Protection legislation requires regulated entities to make full disclosure of all relevant material information including all charges.

Four Member States have specific rules requiring IUs to disclose costs in connection with the service. One Member State applies the MiFID obligation noted below to all designated investment business and its rules require the total price (or basis of calculation) to be disclosed which is the “total price in connection with the designated investment or the designated investment business”.

⇒ Although the terminology varies between the different national measures, the meaning is similar to the one used in MiFID Level 1 text (hereafter “MiFID”), Article 19(3):

“Appropriate information shall be provided in a comprehensible form to clients or potential clients about:

— the investment firm and its services,
— financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,
— execution venues, and
— costs and associated charges
so that they are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and,

and, in particular, MiFID Implementing (Level 2) Directive (hereafter “MiFID IM”), Article 33(a):

“Member States shall require investment firms to provide their retail clients and potential retail clients with information on costs and associated charges that includes such of the following elements as are relevant:

the total price to be paid by the client in connection with the financial instrument or the investment service or ancillary service, including all related fees, commissions, charges and expenses, and all taxes payable via the investment firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it”.

b. In 6 Member States, the insurance undertakings have to inform the policyholder about the identity of the competent authority and Home Supervisors.

→ This is broadly in line with MiFID IM, Article 30(1)(d), which states:

“Member States shall require investment firms to provide retail clients or potential retail clients with.... the name and contact address of the competent authority that has authorised it”.

c. Other measures common to different members are the statement that the IU is authorized (three Member States);

→ This is broadly in line with MiFID IM, Article 30(1)(d), which states:

“Member States shall require investment firms to provide retail clients or potential retail clients with:
(d) A statement of the fact that the investment firm is authorised...”

(2) Regarding IMs:

The disclosure of the cost in connection with the service (e.g. adviser remuneration) is mandatory in one Member State and presented as good practice in another.

IMs in four Member States are obliged to provide information on commission they receive from the IU. In three Member States, this is recognised as a service-related charge. In one Member State, the definition of “commission” is “commission or remuneration”, including a benefit of any kind. One Member State’s national legislation requires disclosure on intermediary and sales remuneration, which is a wider concept than just commission. Also, in one Member State it has been adopted a broader concept of remuneration.

In three Member States, information on “remuneration” should be given only when requested by the customer. In particular, in one Member State, the IM shall inform the client of his right to ask for such information. In another Member State, specifically, when requested by the policyholder, some IMs have to provide the policyholder with information about all types of remuneration (both product- and
service-related) paid by the IU to the IM under the contract and when annual premium exceeds €20,000. In another Member State, the information relates to commission or other types of remuneration, which can be regarded as service-related charges.

These additional measures could be seen also as similar to the provisions of the aforementioned MiFID, Article 19(3) and, in particular, MiFID IM, Article 33(a) which provides:

“Member States shall require investment firms to provide their retail clients and potential retail clients with information on costs and associated charges that includes such of the following elements as are relevant:

the total price to be paid by the client in connection with the financial instrument or the investment service or ancillary service, including all related fees, commissions, charges and expenses, and all taxes payable via the investment firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it”.

3. Other unique, additional disclosure requirements

(1) Regarding IUs:

- Entry number on Commercial Register;
- The identification of the financial group to which it belongs.

(2) Regarding IMs:

In general:

- Possible business connections between the IM and the IU (partner, director, controller or manager);
- Breadth of the firms’ services\(^{10}\);
- Whether or not the IM is authorized to receive premiums in order to be delivered to the insurance undertaking;
- Whether its intervention terminates upon signature of the insurance contract or whether its intervention involves the provision of assistance during the period of validity of the insurance contract;
- Where applicable, its capacity as an employee of an insurance undertaking;
- The legal framework laid down in the Decree-Law (except for some provisions) is applicable, with due adaptations, to the access and exercise of the intermediation business within the framework of pension funds managed, under prevailing legal and regulatory terms, by insurance undertakings or management undertakings of pension funds authorized to operate in the national territory.

For brokers:

- If it accepts its own client’s risk, on behalf of any authorised company under any underwriting agreement or a computer-link arrangement;
- Brokers’ fees are only allowed by the customer.

\(^{10}\) This is in line with MiFID, Article 19(3) and MiFID IM, Article 30.
Summary

The following general trends can be drawn out from this section of the report:

- In the vast majority of Member States, both IUs and IMs are authorised to offer ULLI products in the relevant national jurisdiction. This is particularly relevant given that the provisions of the IMD do not currently apply to sales of ULLI products directly by IUs;

- With regards to IUs, very few Member States make a clear distinction between service-related and product-related charges. In the majority of Member States, the same disclosure requirements apply to both sets of charges;

- With regard to IMs, Member States tend to make a clearer distinction between service-related and product-related charges to take into account the specificities of the advice service provided by the IM. The requirement for information on costs to be disclosed obligatorily or only at the request of the customer seems to vary according to individual national requirements;

- The majority of the national additional measures quoted in this section are mirrored in the provisions of MIFID and MIFID IM; and

- There seem to be very few national “non-cost-related” disclosure requirements, which go beyond both the scope of the CLD and the IMD.
I. 2. Disclosure about the ULLI PRODUCT

I.2.1. Conditions of disclosure

1. Legal framework

(1) CLD - Annex III - Information for policyholders:

The following information, which is to be communicated to the policy holder before the contract is concluded (A) or during the term of the contract (B), must be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

However, such information may be in another language if the policy holder so requests and the law of the Member State so permits or the policy holder is free to choose the law applicable.

(2) IMD - Article 13(1):

“Any information to be provided to the consumers about the product prior to the conclusion of an insurance contract in general shall be communicated:

(a) On paper or durable medium available and accessible to the consumer which means in writing;
(b) In a clear and accurate manner, comprehensible to the consumer;
(c) In an official language of the Member State of the commitment or in any other language agreed by the parties;”

2. Common additional measures

(1) Regarding IUs:

(a) 6 Member States have added similar national measures, which go beyond the CLD and IMD.

The measures listed (which are common to some of the six Member States referred to above) provide that:

1. Key items must be brought to the attention of the consumer;
2. The description of an investment direction must be announced on the website of the insurer and be easily accessible to the user;
3. The method of presentation must not disguise, diminish or obscure important information, statements or warnings;
4. Comparative information must be meaningful and presented in a fair and balanced way;
5. Information must be in a durable medium and provided in good time before the firm concludes the business;
6. Information must be compatible with the methods of communication between the firm and the customer; and
7. A product information sheet is required which shall be clearly identified as such and placed in front of the other information. It must be pointed out to the policyholder that the information is not exhaustive. Insofar as the
information concerns the content of the contract, reference shall be made to the relevant provision of the contract or to the general policy conditions underlying the contract.

Although the terminology varies between the different national measures, the meanings are similar to the one used in the MIFID, Article 19(3) and MIFID IM, Articles 29 and 30.

**Article 19(3)**
Appropriate information shall be provided in a comprehensible form to clients or potential clients about:

— the investment firm and its services,
— financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,
— execution venues, and
— costs and associated charges

so that they are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed.

**MiFID IM**

**Article 27**
Information shall
- be accurate, sufficient and likely to be understood by the retail clients or potential retail clients
- shall not disguise, diminish or obscure important items, statements or warnings
- comparison must be meaningful and presented in a fair and balanced way

**Article 29(4)**
The information referred to in paragraphs 1 to 3 shall be provided in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

**Article 30**
Information should be provided relevant to:
- the languages in which the client may communicate with the firm,
- the methods of communication between the firm and the client

(2) Regarding IMs:

There are no common additional measures relating to IMs.

3. Other unique, additional disclosure requirements

One Member State’s legislation foresees that the general conditions can never be detrimental to the insured.
Another Member State provides that the IU and the IM are obliged to prove that all relevant information has been given to the consumer.

In another, the consumer has to sign that he received a written guide containing the information about the product with sufficient evidence about the life assurance policy.

In another, the consumer has to confirm by signature that descriptions of investment options chosen by him have been presented to him when concluding an ULLI contract.

In another, all information required has to be passed on within a reasonable time frame.

In another, the IM has to provide the consumer with a written document explaining why he is not able to produce written evidence or documents relating to all life and non-life insurance products. A tied insurance intermediary shall explain to the prospective policyholder words and expressions of a technical nature used in a proposal form, cover note or policy of insurance and, where the prospective policyholder appears to understand better in the national language the meanings of such words and expressions, the tied insurance intermediary must explain to the prospective policyholder the meanings of such words and expressions in plain language.

In another, before the conclusion of an ULLI contract, the policyholder is delivered a simplified prospectus by the IU (such obligation may be transferred to the IM). This simplified prospectus is drafted under standard rules (notably language, format and content) and shall be object of disclosure.

Summary

The following general trends can be drawn out from this section of the report:

- There seem to be a number of common national additional measures relating to the conditions of product disclosure for IUs, which, but for the exclusion of IUs from the IMD, would not be considered “additional” because they would not go beyond the provisions of the IMD. This probably explains why there are no common additional measures for IMs. The national additional requirements for IUs are often mirrored very closely by corresponding provisions in MiFID IM; and

- There are very few unique, national additional measures in this area.
I.2.2. Content of disclosure

1. **Legal framework**

**1) CLD - Article 36 and Annex III**

*Article 36*

*Information for policy holders*

1. Before the assurance contract is concluded, at least the information listed in Annex III (A) shall be communicated to the policy holder.

3. The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex III only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.

The content of Annex III (A) relating to the information about the commitment ((a)4-(a)16)

(a)4 Definition of each benefit and each option

(a)5 Term of the contract

(a)6 Means of terminating the contract

(a)7 Means of payment of premiums and duration of payments

(a)8 Means of calculation and distribution of bonuses

(a)9 Indication of surrender and paid-up values and the extent to which they are guaranteed

(a)10 Information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate

(a)11 For unit-linked policies, definition of the units to which the benefits are linked

(a)12 Indication of the nature of the underlying assets for unit-linked policies

(a)13 Arrangements for application of the cooling-off period

(a)14 General information on the tax arrangements applicable to the type of policy

(a)15 The arrangements for handling complaints concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings

(a)16 Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the assurer proposes to choose

The CLD (Article 36(3)) allows Member States to supplement these requirements with additional information “if it is necessary for a proper understanding by the policy-holder of the essential elements of the commitment”.

**2) IMD**

*IMD - Article 12(3)*

The insurance intermediary must at least *specify*, in particular on the basis of information provided by the customer, *the demands and the needs of that customer as well as the underlying reasons* for any advice given to the customer on a given insurance product. These details shall be modulated according to the complexity of the insurance contract being proposed.
2. Common additional measures

N.B. In one Member State, a distinction is made between information about the content of the contract, which the IU is required to provide, and information/advice given by both the IU and the IM, which must be adapted according to the complexity of the product offered and the personal circumstances of the customer.

(1) Regarding both IUs and IMs:

a) separation of the assets (two Member States, one specifically relating to IUs)

b) major exclusions in the cover provided (three Member States) and conditions under which the insurance company is released from liability (two Member States)

These additional requirements in relation to exclusion of liability are comparable with MiFID IM, Article 31(2)(c), which provides that, with regard to the "general description of risks of financial instruments“ which investment firms must provide to clients under Article 31(1), MiFID IM, this general description must include information on "the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments."

c) whether the insurance company offers any capital or yield (six Member States, one specifically relating to IUs)

d) the amount that the policy-holder will receive depends on market fluctuations (two Member States, one specifically related to IUs)

MiFID IM, Article 31(1) provides that investment firms must provide clients or potential clients with a "general description of the...risks of financial instruments“. According to Article 31(2)(b), this description of risks shall include "the volatility of the price of such instruments and any limitations on the available market for such instruments”.

e) who is to bear the risks (two Member States), potential risks (two Member States)

This measure is in line with MiFID, Article 19(3) 2nd indent (which refers to "guidance of the risks associated with investments in those investments or in respect of particular investment strategies) and in particular, MiFID IM, Articles 31(1) and (2)(a) and (c) re potential risks, which state:

"Member States shall require investment firms to provide clients or potential clients with a general description of the nature and risks of financial instruments..... That description must explain the nature of the specific type of instrument concerned, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis."
The description of risks shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements:

**the risks associated with that type of financial instrument** including an explanation of leverage and its effects and the risk of losing the entire investment;

the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments”.

**f) investment specialisation:** (for instance, investments into a particular geographical field, industry, economic sector, currency, certain kind of securities, (three Member States), **graphical performance of the fund** (one Member State, specifically in relation to IUs), **investment currency** (one Member State)

As regards the reference to “currency”, MiFID IM, Article 33(b) provides that “where any part of the total price [including all related fees, commissions, charges and expenses] is to be paid in or represents an amount of foreign currency”, [investment firms should provide their clients with] “an indication of the currency involved and the applicable currency conversion rates and costs”.

As regards the “graphical performance of the fund”, MiFID IM, Article 30(2) provides:

“Member States shall ensure that, when providing the service of **portfolio management**, investment firms establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm's performance”.

**g) the date of the fund/investment direction launch and, if any, the date of its closure** (two Member States)

**h) the historic data: annual performance** (one Member State) for the five past years or, if not possible, from its launch date (one Member State) or for the ten past years or, if not possible, in complete civil years from its launch date (one Member State), change in the value of the investment unit of an investment direction over the past three years (two Member State)

**i) the intermittent nature of the costs** (three Member States, one specifically related to IUs)

**j) charges for switching funds** (two Member States)

**k) prospectuses or reports re investment funds/CIS with information on investment objectives** (two Member States)

*This additional measure is broadly in line with MiFID IM, Article 34(2), which provides that Member States shall ensure that in respect of units in a collective investment undertaking covered by [the UCITS Directive], a*
simplified prospectus... is regarded as appropriate information for the purposes of the provisions in MiFID, Article 19(3) relating to the nature of financial instruments/proposed investment strategies and costs & associated charges.

l) information on indexes and how they affect the premium (two Member States)
m) amendments to terms/conditions e.g. premium and method of payment (two Member States)
n) maturity of the investment/obligations (two Member States)

(2) Regarding IUs or IMs:

No common measures.

3. Other unique, additional disclosure requirements

(1) Regarding both IUs and insurance IMs:

There is a very large variety of additional requirements for Member States including the following:

- Presentation of fund’s performance;
- Categories of investors targeted,
- Payment of Indemnities,
- In case the units are linked to shares of mutual funds for which there is no license for investment, information is given about these shares and their net price, selling price
- General clause: any information that the applicant may need to assess his insurance requirement and select the insurance;
- Partition of amount paid up by the policyholder: total paid amount, including all charges, amount to be invested, share price, number of shares;
- Description of the cover/insured event;
- Intermittent nature of announcement of the value of an investment unit;
- Kind of internal fund regarding the classification of investment limits
- A Product Information document which should include the detailed terms and conditions of the unit-linked contract;
- Way of calculating and granting discounts;
- Period recommended for the investment;
- Compensation arrangements;
- Whether, and to what extent, the assurance savings transferred to another assurance; and
- Events on the basis of which the IU’s obligation to pay the benefit arises under the insurance contract.

Summary

The following general trends can be drawn out from this section of the report:

- What is very striking in this section (relating to disclosure requirements pertaining to the content of the ULLI product) is that, in the majority of cases, common national additional measures apply to both IUs and IMs. This is particularly relevant given that the requirements of the CLD are far more prescriptive in this area than the IMD;
- The majority of the common additional measures in question tend to be additional to the CLD in the sense that they are slightly more detailed than the CLD. They are often, in any event, mirrored by comparable provisions in MiFID IM; and

- In addition, there are a striking number of detailed additional measures, which are unique to individual Member States, in this section, suggesting that Member States have sought to be more prescriptive than the terms of the CLD in order to, for example, protect consumers.
I.3. Information about the customer

1. Legal framework

(1) CLD – there are no relevant provisions under the CLD

(2) IMD

*Article 12(3)*

**Information provided by the insurance intermediary**

Prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product. These details shall be modulated according to the complexity of the insurance contract being proposed.

2. Common additional measures

There are no common additional measures

3. Other unique, additional requirements

**N.B.** Elements of two Member States’ individual requirements (highlighted in bold) seem to be broadly in line with some of the conduct of business requirements in MiFID and MIFID IM (also highlighted in bold):

One Member State - The financial undertaking is only obliged to provide advice at the customer’s request or on its own initiative if the circumstances indicate that there is a need to do so

Another Member State - In order to be able to fulfil its obligation to disclose relevant information to the client according to the national legislation, the IM must ask relevant information from the client.

Another Member State - In cases where the customer elects to provide insufficient information regarding his/her knowledge and experience, the insurance undertaking shall warn her prior to the conclusion of the contract. *(Compare with wording in Article 19(5) MiFID and Article 37 MIFID IM quoted below).*

Another Member State - The national Regulations require the IU or IM to sign a declaration that the customer has received the prescribed information and the customer has to sign a declaration confirming that that they have received the required information. In addition, the IU or IM has to sign a document stating that they have advised the customer as to the consequences of replacing an existing policy with a new policy and of the possible financial loss as a result of such a replacement.

Another Member State - IUs may demand that the insured person undergoes medical examinations or diagnostic examinations in order to assess the insurance risk, determine the right to a benefit and the amount of this benefit

Another Member State – In addition to the transposition of Article 12(3) of the IMD, IM shall advise the client on the modality/type of contract more suitable/convenient to
the risk transfer or the investment. Selling entities (IU and IM) of ULLI contracts shall also ask the client for the necessary information in order to assess the appropriateness of the product to the personal circumstances of the client, notably, its risk profile as to provide guidance to his investment decision.

Another Member State - **If the customer is already well known to the IU, the IU does not need to obtain all the information regarding the costumer.** In such cases, the undertaking shall document the reason for omitting to obtain the information. In the event the consumer does not wish to provide information regarding himself/herself, such fact should also be noted. *(Compare with client categorisation provisions in MIFID referred to below).*

**MiFID**

**Article 19(4) – Suitability test**

*When providing investment advice or portfolio management*, the investment firm shall *obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives* so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him.

**Article 19(5) – Appropriateness test**

Member States shall ensure that investment firms, when providing investment services *other than those referred to in paragraph 4*, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client.

In case the investment firm considers, on the basis of the information received under the previous subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. This warning may be provided in a standardised format.

**In cases where the client or potential client elects not to provide the information referred to under the first subparagraph, or where he provides insufficient information regarding his knowledge and experience, the investment firm shall warn the client or potential client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him.** This warning may be provided in a standardised format.

**ANNEX II – Client categorisation**

Professional clients for the purpose of this directive

*The investment will categorise the client as a retail or professional client. A retail client receives the highest level of investor protection.*

**MiFID IM**

**Article 28 - Information concerning client categorisation**
1. Member States shall ensure that investment firms notify new clients, and existing clients that the investment firm has newly categorised as required by Directive 2004/39/EC, of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with that Directive.

2. Member States shall ensure that investment firms inform clients in a durable medium about any right that client has to request a different categorisation and about any limitations to the level of client protection that it would entail.

**Article 36 - Assessment of appropriateness**

Member States shall require investment firms, when assessing whether an investment service as referred to in Article 19(5) of Directive 2004/39/EC is appropriate for a client, to determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded. For those purposes, an investment firm shall be entitled to assume that a *professional client has the necessary experience and knowledge in order to understand the risks involved* in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

**Article 37 - Provisions common to the assessment of suitability or appropriateness**

1. Member States shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

   (a) the types of service, transaction and financial instrument with which the client is familiar;
   (b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;
   (c) the level of education, and profession or relevant former profession of the client or potential client.

2. An investment firm shall not encourage a client or potential client not to provide information required for the purposes of Article 19(4) and (5) of Directive 2004/39/EC.

3. An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

**Summary**

The following general trends can be drawn out from this section of the report:

- As is already well recognised, the existing legal framework relating to “information about the customer” under the IMD is extremely limited, which is in stark contrast to the detailed provisions of MiFID and MiFID IM.
What is particularly relevant, however, is that there is no commonality with regard to the additional measures that Member States have enacted relating to “information about the customer”; and

Those unique national additional measures that do exist, are mirrored to some extent under MiFID and MiFID IM, particularly with regard to the concept of “risk transfer” (where the policyholder accepts the assumption of risk where he/she chooses not to disclose sufficient information) and “client categorisation”. This seems to indicate that some Member States have chosen to extend (or replicate) the provisions of MiFID to customer information requirements.
II. INFORMATION DURING THE CONTRACT

1. Legal Framework

(1) CLD

Article 36:

2. The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B).

3. The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex III only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.

Annex III(B):
B. During the term of the contract

In addition to the policy conditions, both general and special, the policyholder must receive the following information throughout the term of the contract.

Information about the assurance undertaking
(b)1 Any change in the name of the undertaking, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract

Information about the commitment:
(b)2 All the information listed in points (a)(4) to (a)(12) of A in the event of a change in the policy conditions or amendment of the law applicable to the contract:

(a)4 Definition of each benefit and each option
(a)5 Term of the contract
(a)6 Means of terminating the contract
(a)7 Means of payment of premiums and duration of payments
(a)8 Means of calculation and distribution of bonuses
(a)9 Indication of surrender and paid-up values and the extent to which they are guaranteed
(a)10 Information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate
(a)11 For unit-linked policies, definition of the units to which the benefits are linked
(a)12 Indication of the nature of the underlying assets for unit-linked policies.

(b)3 Every year, information on the state of bonuses.

(2) N.B. The IMD does not cover this issue.
2. Common additional measures

In every Member State, the national legislation concerning the information duties during the contract is based on the conditions set out by the CLD. Article 19(8), MiFID provides for a reporting requirement, namely that "the client must receive from the investment firm adequate reports on the service provided to its clients. These reports shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client". There is, however, very little similarity between this provision of MiFID (plus the corresponding provisions relating to reporting in respect of portfolio management under MiFID IM) and the national additional measures cited below.

(1) Regarding insurance undertakings:

In almost all Member States, information duties of the IU have a broader scope than the CLD. This is allowed in Article 36(3) CLD which stipulates that: "The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex III only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment."

There are two main information requirements under the CLD:

1. In the event of a change in policy conditions or amendment of the law applicable to the contract, the IU has to provide the information listed in points (a)(4) to (a)(12).
2. Every year, the IU has to provide information about the state of bonuses.

1. Provision of Data

Almost all Member States use the same additional requirements for the IU. In addition, it is common practice for the IU to inform the policyholder annually about specific data. But, the scope of the data is often substantially different for each Member State – see point 3 below.

2. Information about the “state of bonuses”

Most Member States require the IU to inform the policyholder annually about information whose scope is broader than simply “state of bonuses” or the information mentioned in points (a)(4) to (a)(12), Annex III of the CLD.

In fact, almost no Member State (applying this annual information duty) actually uses the phrase “state of bonuses” (derived from the CLD) at all. In many cases, the phrase employed by Member States is just a more detailed description of “state of bonuses” (e.g. “the size of the assurance benefits”, “total invested amount” and “current cash surrender value”).

The following are examples of requirements, which are common to some Member States:

- the amount of paid-up premiums (six Member States),
- the premium for death coverage during the past year (two Member States),
- the number of units in the customer’s unit-linked fund (three Member States),
- the value of the unit and the movements during the past year (three Member States
- in addition since the conclusion of the contract), the number of units of the unit-
linked fund belonging to the policyholder (one Member State)
- the total amount paid by the policyholder, taxes and charges included (one Member
State, taxes – two Member States),
- the current cash surrender value (five Member States),
- the current status of the account of the insurance contract (two Member States).

(2) Regarding insurance intermediaries:
There are no common information requirements regarding insurance intermediaries.

3. Other unique, additional disclosure requirements

(1) Regarding insurance undertakings:

As mentioned above, most Member States require the IU to inform the policyholder
annually about information whose scope is broader than simply “state of bonuses” or
the information mentioned in points (a)(4) to (a)(12), Annex III of the CLD.

These are some examples of the additional requirements:

- service value of the life assurance policy (one Member State),
- inheritance profit (one Member State),
- a reference to the website of the insurer, where descriptions of investment directions
chosen by the policyholder are announced (one Member State);

One Member State’s national Regulations require IUs to provide the customer with an
annual written statement which shall contain:

(i) the current premium payable,
(ii) the current surrender or maturity value

Those requirements, in general, are similar to the portfolio management reporting
requirements and provisions relating to “Statements of client financial instruments or
client funds” contained in Articles 41(1),(2) and Article 43(1), MiFID IM.

Nine Member States, apart from their annual information requirements, have very
unique additional information requirements.

One Member State uses a very general obligation: "the financial undertaking is
obliged to provide advice at its own initiative if the circumstances indicate that there is
a need to do so”.

Another obliges IUs not to charge any extra costs for the written information provided
once a year.

Also, if the contracting party submits, at any other time, such request to the insurer,
in writing or in any other identifiable form, the insurer shall provide the above details
to the contracting party within 15 days of the request, in writing or in an electronic
form. The insurer may charge a separate cost for such service.

In one Member State, the IU has also to fulfil some notification obligations:
“the insurance company shall notify - and provide sufficient evidence - the
policyholder within thirty days of the operative date of the contract - in an official language of the Member State of the commitment or in another language if the policyholder so requests and if there is an agreement to that effect - that the contract has entered into existence.”

In the same Member State, in addition to the annual written notification, the contract must also contain the name and contact data of the policyholder’s IM or the name and contact data of the IU from which the policyholder may obtain detailed information about his/her insurance contract.

In another Member State, The insurer must dispatch the policyholder details of the sum insured and of any other circumstances of manifest importance to the policyholder once a year.

In another, The insurer must communicate to the policyholder in writing, no later than 10 working days after the valuation dates of the units (the day to which the quotation of the units refers), the amount of the gross premium paid to execute the contract and that applies to the investment, the contract's commencement date, the number of units attributed, their unit value and the valuation date.

As regards successive premiums, the IU must communicate to the policyholder in writing, no later than 10 working days after the valuation date of the units, the amount of the gross premium paid in, and the amount invested, the number of units attributed further to the new payment, their unit value and their valuation date.

Similarly, in another Member State, where the IU must inform the policyholder about the existence or non-existence of a right to withdraw from the contract, and if this right exists, its duration and the terms of applying it, including information on the amounts due, if any, by the policyholder, as well as the consequences of the failure to exercise such a right and practical instructions for the exercise of such right, indicating inter alia, the address where the notification has to be sent to.

In another Member State, the IU is obliged to:

1) make a valuation of insurance capital funds units at least once a month; and
2) publish in a nationwide daily newspaper, without delay upon its determination, the value of such insurance capital funds units.

In another Member State, the client is delivered by the selling entity (IU or IM), at least, quarterly, a statement including the number of units, their value and the total value of the investment.

In another Member State, changes in the details of the Product information are to be provided by the IU during the term of the contract.

In another Member State, an annual report is sent every year to with-profits policyholders and the Customer Friendly Principles and Practices of Financial Management must be made available. In addition, if a surrender value is requested for a tradable life policy, the policyholder must be informed of the market for traded policies.

In the same Member State, for pension policies where regular fund withdrawals are chosen instead of buying an annuity, the IU has to provide annual information to
enable this choice to be reviewed. Quotes for annuities must inform policyholders that they can buy an annuity from any provider.

For Personal and Stakeholder Pensions, there is a requirement from the national ministry to send an annual inflation-adjusted estimate of the pension at retirement.

(2) Regarding insurance intermediaries:

Only four Member States require particular information duties during the insurance contract from the IM.

In one Member State, insurance consultants and insurance agents must inform their customers in the event that they cease conducting business as IMs. Insurance consultants are also obliged to inform the policyholder about the consequences of early termination of the insurance contract, as well as about any exclusions from the insurance cover.

In another, the national Consumer Protection Code requires regulated firms, including IMs, to provide their customer with a “term of business” document prior to providing the first service to the consumer. Where a regulated entity makes a material change to this document it must provide each affected consumer with details of the changes as soon as possible.

In another, changes in the details of the Product information are to be provided by the IM during the term of the contract.

In another, if the IM receives remuneration for mediation services from the insurer during the term of the contract, the information must provide the basis for how the remuneration is determined. If the IM receives special remuneration from the service provider if the policyholder pays a higher premium than that stipulated in the contract with the service provider, the information shall provide the amount of the remuneration or the basis for how the remuneration is determined.

Summary

The following general trends can be drawn out from this section of the report:

- The existing legal framework is very depleted in that “information requirements throughout the term of the contract” are only properly addressed under the CLD and thus it is no surprise that any common additional measures only apply to IUs;

- However, the relevant provision of the CLD itself is minimum harmonising, thus it is also unsurprising that in almost all Member States, information duties of the IU have a broader scope than the CLD. These information duties also do not bear any direct comparison with MiFID or MiFID IM;

- Almost all Member States use the same additional requirements for the IU. In addition, it is common practice for the IU to inform the policyholder annually about specific data; and

- The scope of the data is often substantially different for each Member State (going well beyond the notion of “state of bonuses” under the CLD) as a large number of Member States have very unique additional measures in this area.
III. ONGOING REQUIREMENTS (before and during the contract)

1. Legal framework

(1) CLD

Recital 52

In an internal market for assurance, the consumer will have a wider and more varied choice of contracts. If he/she is to profit fully from this diversity and from increased competition, he/she must be provided with whatever information is necessary to enable him/her to choose the contract best suited to his/her needs. This information requirement is all the more important as the duration of commitments can be very long. The minimum provisions must therefore be coordinated in order for the consumer to receive clear and accurate information on the essential characteristics of the products proposed to him/her as well as the particulars of the bodies to which any complaints of policy holders, assured persons or beneficiaries of contracts may be addressed.

Annex III (A) - Information for policyholders

(a)15 The arrangements for handling complaints concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings.

(2) IMD

Recital 23

Without prejudice to the right of customers to bring their action before the courts, Member States should encourage public or private bodies established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes. Such cooperation could for example be aimed at enabling customers to contact extra-judicial bodies established in their Member State of residence about complaints concerning insurance intermediaries established in other Member States. The setting up of the FIN-NET network provides increased assistance to consumers when they use cross-border services. The provisions on procedures should take into account Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.

Article 10 - Complaints

Member States shall ensure that procedures are set up which allow customers and other interested parties, especially consumer associations, to register complaints about insurance and reinsurance intermediaries. In all cases complaints shall receive replies.

Article 11 - Out-of-court redress

1. Member States shall encourage the setting-up of appropriate and effective complaints and redress procedures for the out-of-court settlement of disputes between insurance intermediaries and customers, using existing bodies where appropriate.
2. Member States shall encourage these bodies to cooperate in the resolution of cross-border disputes.

**Article 12 - Information provided by the insurance intermediary**

1. Prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal thereof, an insurance intermediary shall provide the customer with at least the following information:

   (e) the procedures referred to in Article 10 allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries and, if appropriate, about the out-of-court complaint and redress procedures referred to in Article 11.

(3) MiFID IM

**Article 10 - Complaints handling**

Member States shall require investment firms to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients or potential retail clients, and to keep a record of each complaint and the measures taken for its resolution.

2. Common additional measures

No common additional measures

3. Other unique, additional disclosure requirements

Two Member States possess the following national provisions, which do not concern the matter of complaints and that could qualify as national additional measures for the purposes of this report:

In one of these Member States, the IU must provide the policyholder with the following information during the lifetime of the insurance contract:

- any change in the IU’s identity or contact address and in that of any branch office through which the contract was concluded. N.B. this particular information requirement also applies in another Member State;
- the main features of the insurance benefits, in particular details on the nature, scope and due dates of benefits payable by the IU;
- the total cost of the insurance, including all taxes and other cost components; premiums shall be stated individually if the insurance relationship comprises several independent insurance contracts, or, if the exact cost cannot be provided, information on its basis of calculation to enable the policyholder to verify the cost;
- any additional costs, if applicable, stating the total amount payable and any possible additional taxes, fees and costs not levied via or charged by the insurer; as well as any costs incurred by the policyholder for the use of communication methods if such additional costs are chargeable;
• details on the payment and compliance; in particular, the method by which premiums are to be paid.

In the other Member State, one chapter of its rulebook sets out its interpretation of the requirements of the CLD in relation to unit-linked and index-linked contracts. This deals with the assets that can be used (set out by article 23 of the CLD) and the way they must be managed (in Articles 23 and 25 of the CLD). It does not deal with information disclosure which is covered in other parts of its rulebook and with specific reference to CLD requirements in this part of the rulebook.

There are two parts to the relevant section of its rulebook:

• The first part sets out high level rules on how firms must manage their assets to ensure they meet the standards in the CLD such that they are capable of being fairly and accurately valued, of being realised in time to meet policy benefits and of being closely matched, i.e. the value of the assets must be the same as or very similar to the value of the liabilities under the policy.

• The second part sets out which assets can be used. Please note that not all assets mentioned in Article 23 are eligible to be used under this part of the rulebook, or have further qualifications attached to them. The reason for this is either: they are not relevant to linked business; or the national supervisor takes the view that, to be capable of being used to back linked benefits, eligible assets need to pass some further tests, as otherwise there is a danger customers may not be treated fairly.

Article 23(3) of the CLD gives home Member State regulators the power to do this.

**Summary**

The following general trends can be drawn out from this section of the report:

- The existing legal framework in this area is largely concerned with the on-going provision of information by IUs and IMs to customers relating to complaints-handling and out-of-court dispute settlement. As far as complaints-handling mechanisms are concerned, the provisions of MiFID are far more prescriptive than those in the CLD and IMD;

- The requirements referred to in this section are not specific for Unit-Linked Life Insurance Products - they are common to all Life Insurance products (CLD) and/or to all the products which are offered by an insurance intermediary (IMD);

- Some national additional measures described by Member States might be similar in other Member States but were not interpreted as "additional" as it is extremely difficult to conclude that a certain provision is "above the minimum requirements of the CLD and IMD" because those minimum requirements are drafted in such a general manner; and

- *Aside from complaints-handling and out-of-court dispute settlement measures*, a small number of bespoke individual national measures also exist.
IV. PROFESSIONAL REQUIREMENTS

1. Legal framework

(1) CLD

Article 6(1)(e) - Conditions for obtaining authorisation

The home Member State shall require every assurance undertaking for which authorisation is sought to be effectively run by persons of good repute with appropriate professional qualifications or experience.

(2) IMD

Article 4 – Professional Requirements

1. Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary.

Home Member States may adjust the required conditions with regard to knowledge and ability in line with the activity of insurance or reinsurance mediation and the products distributed, particularly if the principal professional activity of the intermediary is other than insurance mediation. In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for his actions.

Member States may provide that for the cases referred to in the second subparagraph of Article 3(1), the insurance undertaking shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in the first subparagraph of this paragraph and, if need be, shall provide such intermediaries with training which corresponds to the requirements concerning the products sold by the intermediaries.

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons working in an undertaking who pursue the activity of insurance or reinsurance mediation. Member States shall ensure that a reasonable proportion of the persons within the management structure of such undertakings who are responsible for mediation in respect of insurance products and all other persons directly involved in insurance or reinsurance mediation demonstrate the knowledge and ability necessary for the performance of their duties.

2. Insurance and reinsurance intermediaries shall be of good repute. As a minimum, they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they should not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

Member States may, in accordance with the provisions of the second subparagraph of Article 3(1), allow the insurance undertaking to check the good repute of insurance intermediaries.

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons who work in an undertaking and who
pursue the activity of insurance and reinsurance mediation. Member States shall ensure that the management structure of such undertakings and any staff directly involved in insurance or reinsurance mediation fulfil that requirement.

3. Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1000000 applying to each claim and in aggregate EUR 1500000 per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.

4. Member States shall take all necessary measures to protect customers against the inability of the insurance intermediary to transfer the premium to the insurance undertaking or to transfer the amount of claim or return premium to the insured.

Such measures shall take any one or more of the following forms:

(a) provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them;

(b) a requirement for insurance intermediaries to have financial capacity amounting, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of EUR 15000;

(c) a requirement that customers' monies shall be transferred via strictly segregated client accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy;

(d) a requirement that a guarantee fund be set up.

5. Pursuit of the activities of insurance and reinsurance mediation shall require that the professional requirements set out in this Article be fulfilled on permanent basis.

6. Member States may reinforce the requirements set out in this Article or add other requirements for insurance and reinsurance intermediaries registered within their jurisdiction.

7. The amounts referred to in paragraphs 3 and 4 shall be reviewed regularly in order to take account of changes in the European Index of Consumer Prices as published by Eurostat. The first review shall take place five years after the entry into force of this Directive and the successive reviews every five years after the previous review date.

The amounts shall be adapted automatically by increasing the base amount in euro by the percentage change in that Index over the period between the entry into force of this Directive and the first review date or between the last review date and the new review date and rounded up to the nearest euro.
Considering the above mentioned provisions, articles regarding General professional requirements arise in relation to good repute, appropriate education, professional experience and professional indemnity insurance.

In relation to the above stated and for the purposes of the exercise the Professional requirements concerning the IU (I.) have been divided in three groups:

1.) Appropriate knowledge and ability;
2.) Appropriate education and professional experience and
3.) Good repute,

and those for the IM (II) in four groups:

1.) Appropriate knowledge and ability;
2.) Appropriate education and professional experience;
3.) Good repute and
4.) Professional indemnity insurance.

2. Common national additional requirements

There are no common national additional professional requirements.

3. Other unique, additional requirements

N.B. The provisions of MiFID do not go beyond what is contained in these national disclosure requirements.

(1) Regarding IUs:

1. Appropriate knowledge and ability

Usually Member States applying this professional requirement use a different description (for example: “knowledgeable”, “appropriate professional qualifications”).

Three Member States pointed out that this general professional requirement for appropriate knowledge and ability has been extended to the sales staff or managing board:

One of these Member States requires IUs to use only such employees for the conclusion of insurance contracts who have the professional qualification required for their respective use.

Another stipulates a very general obligation: “The professional requirements of insurance companies selling stuff is controlled and also trained by insurance companies”;

Another provides that, when any undertaking pursues insurance activity under the national legislation, then, for managing the insurance investment fund or insurance investment funds, it shall be obliged to employ an investment adviser or conclude a contract with an entity authorised, on the basis of separate provisions, to manage assets on order.

In another, members of the management and senior management shall meet specific criteria as far as qualifications/ knowledge and ability are concerned. Also, it must be
ensured that the IU’s collaborators hold adequate qualifications and have the necessary skills and experience to perform their duties/ functions.

2. Appropriate education and professional experience

In respect of the professional requirements, one Member State provides obligations for the IU to train its selling staff.

3. Good repute

All Member States have general professional requirements about good repute of the persons who effectively manage the company. However, in many cases, the Member States used more detailed descriptions instead of the term, “Good repute” e.g. “honest, honourable, “fit and proper persons”.

(2) Regarding IMs:

1.) Appropriate knowledge and ability

Three Member States pointed out that, apart from the General professional requirement for appropriate knowledge and ability, they have some specific professional requirements:

In one Member State, IMs are subject to an annual renewal of registration with a professional body, upon penalty of removal from the list if they are found non-compliant.

One Member State’s legislation provides a requirement of a minimum age for an IM.

Another Member State uses a very general obligation: “Successfully passed exam of expertise necessary for performing businesses related to insurance agency services or brokerage”.

Another Member State recognises by the supervision authority and shall meet the requirements and minimum content defined by Regulation.

2.) Appropriate education and professional experience

Specific professional requirements in respect of the appropriate education and professional experience are contained in the legislation of the four Member States:

In one of these Member States, there are requirements relating to secondary education (a minimum requirement) and previous professional experience.

In another, some IMs have to provide documentary evidence of one of the following:

(a) A professional training period of a length which cannot be less than at 150 hours;
(b) Work experience of two or four years depending on function; or
(c) The possession of a specific certificate;

Another Member State’s legislation requires the IM to have at least one year’s experience in the area of insurance business.
In another, the IM should possess secondary vocational education (as a minimum). As regards the level of professional qualifications required, these are full secondary education or university education. There is a requirement for one, two or three years of professional experience for medium level, according to the education achieved. For the top level, it is necessary to have three to five years of professional experience.

3.) Good repute:

Specific professional requirements in respect of “good repute” can be found in the legislation of five Member States:

In one Member State, the IM should present certificates issued by the competent judicial authorities attesting to the fact that the IMs/reinsurance intermediaries have not been declared bankrupt and their capacity to conclude legal acts is not limited by a court order.

In another, there is a very general obligation on the legal person responsible for pursuing insurance mediation activities to ensure that insurance agents observe good insurance practice and insurance brokers observe good brokerage practice when pursuing insurance mediation activities, and that the activities are otherwise pursued in accordance with the law.

Another Member State’s legislation provides negative definitions about the good repute of the IM and stipulates what persons in charge of the IM should not be.

In another, IM are not considered of good repute if: (i) they have been convicted for the set of crimes identified in the Legal Act (for instance, bribery, insolvency, market abuse, money laundering), (ii) they (or a company where they have worked or hold) have been declared insolvent or (iii) they have been convicted by breach of legal rules or regulations governing, for instance, the activity of insurance or reinsurance undertakings. These requirements are similar to those applicable to members of the management board and senior management.

In another, there is a specific period (at least three months) in which the IM should not been given a final non-suspended prison sentence.

In another, the IM must be a trustworthy person, who:

(a) has a clean criminal record in relation to crimes against property, crimes associated with work in a managerial position, or other intentional criminal offences;
(b) has not held, in the last ten years, a post of member of statutory body or senior employee or responsible actuary in an insurance undertaking (or reinsurance or financial institution, or intermediary) whose licence to operate was withdrawn or was placed under forced administration or in bankruptcy;
(c) is not considered a trustworthy person pursuant to separate regulations for business in the area of financial markets; and
(d) has been performing his duties or doing business over the past ten years in a reliable manner, without violating generally binding regulations.
4) Professional indemnity insurance

No other unique additional disclosure requirements.

**Summary**

The following general trends can be drawn out from this section of the report:

- The existing legal framework is far more prescriptive for IMs, operating under the IMD than for IUs under the CLD. The provisions in MiFID do not, however, go further than those contained in the CLD and IMD;

- Interestingly, the General Professional requirements have to be fulfilled by all the IUs and the IMs, not only by those offering ULLI Products; and

- National additional requirements in this area are particularly bespoke, given that there are no common additional measures – Member States have tended to supplement the provisions of the CLD and IMD with far more prescriptive, exacting requirements. This is particularly evident in relation to national additional measures relating to IMs; perhaps to counteract past concerns in national jurisdictions over the fitness and propriety of IMs and perceived deficiencies in training and competence.