

Luxembourg, March 18th, 2016

Response to European Commission Green Paper on Retail Financial Services Better products, more choice, and greater opportunities for consumers and businesses

Introduction

The Association of the Luxembourg Fund Industry (ALFI) is the representative body of the Luxembourg investment fund community. Created in 1988, the Association today represents over 1300 Luxembourg domiciled investment funds, asset management companies and a wide range of service providers such as custodian banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax experts, auditors and accountants, specialist IT providers and communication companies. The Luxembourg Fund Industry is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg-domiciled investment structures are distributed on a global basis in more than 70 countries with a particular focus on Europe, Asia, Latin America and the Middle East.

We thank the European Commission for the opportunity to participate in this consultation on retail financial services.

We support the submission of the European Fund and Asset Management Association (EFAMA).

Response to the consultation

General questions

1. For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?

Two fields of business in which cross-border supply may increase competition to the benefit of retail investors are pensions and long-term investments. Indeed, cross-border supply and competition is already largely achieved in the UCITS field (although improvements are possible and desirable), but such cross-border supply and competition are largely inexistent in the pensions and long-term assets businesses. The introduction of the ELTIF is a first step into this direction and PEPP could be a second one, provided these frameworks are allowed to function as intended and no national gold-plating or the introduction of excessive complexity are allowed to creep in.

In respect of the PEPP we refer to EFAMA's statement, which ALFI fully supports.

2. What are the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?

A number of asset managers market their funds through distribution agreements with local (MIFID) entities and do not market direct to customers. One main reason for this is that the asset managers would be faced with 28 different marketing regimes.

In the past there was some support at an EU funds industry level for a request that there should be standardised marketing rules across the EU. At present a Member State can impose additional marketing requirements on certain products (on a non-discriminatory basis), this has happened in the Dutch and French market. This would certainly reduce one barrier where a company wishes to market its own product using the UCITS/AIF passport (rather than a combination of UCITS and MIFID).

ALFI strongly supports a call for common marketing rules for products across the EU. A fall-back position could be for financial services legislation to follow MiFID architecture, where a company providing investment services uses home State rules when providing services but host State where a branch is used (MiFID II Article 24(3) refers to marketing communications, Article 34 (1) second paragraph and Article 35(1) second paragraph and (8) are relevant here). This latter provision would mean a firm has only one set of marketing rules to conform to and would also work where services are being provided using digital technology.

Further barriers preventing direct cross-border distribution include local tax rules and national gold-plating of EU directives.

3. Can any of these barriers be overcome in the future by digitalisation and innovation in the FinTech sector?

Digitalisation is expected to provide consumers with better access to financial products. However the barriers mentioned in question 2 need to be addressed in order to reduce the costs for asset managers to offer their products cross border.

Digitalisation should also enable the industry to operate more efficiently by introducing new techniques such as digital identity and KYC utilities. In order to facilitate cross border product distribution, such solutions will need to be recognised/endorsed by the national regulators.

In ALFI opinion, the current body of EU financial service legislation does not sufficiently take into consideration the improvements that technology has brought to consumers in terms of empowering them with the ability to get information at the time and in the format that they find most useful. Much of the standardised disclosure requirements (e.g. KIID) were developed around the time where the majority of communication was in paper form. This now has to evolve to adapt to the new 'digital age' where communications are increasingly tailored to the individual in terms of format, media and content.

4. What can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate?

The breakthrough of digital Fintech retail financial services will reach many more citizens in the coming years as digital literacy is wider spread among the younger generation. It can be expected that due to lower cost/higher service possibilities of digital service the legacy non-digital offerings will shrink. Through cost saving pressure the legacy non-digital route will seek further simplification so that private, social, voluntary or public sector digital assistance (where a digital included actor assists a digital excluded actor) can evolve.

E.g. in Denmark Public Sector communication is now handled digitally (via a common email repository infrastructure) for those not digitally connected a printout service (e.g. at post office, itself perhaps a booth at a grocery) might be coupled to the digital E-box system.

Also, financial services providers should offer the opportunity for people to "go back to paper" or a "face-to-face service to consumers" if they are unsatisfied with their digital experience.

5. What should be our approach if the opportunities presented by the growth and spread of digital technologies give rise to new consumer protection risks?

Nowadays, the marketing rules of financial services are national. This situation gives a fragmented European market and refrains the provision of cross border financial services.

The EU Commission should work on a common European regulatory framework related to the digital offer of financial services: common investor protection rules, common disclosure of information rules. This should be done at the EU level to increase the competition between financial services providers.

A fall back option could be for financial services legislation to follow MiFID architecture, where a company providing investment services uses home State rules when providing services through digital technology.

6. Do customers have access to safe, simple and understandable financial products throughout the European Union? If not, what could be done to allow this access?

In the UCITS field a lot has been done to achieve the objective of providing a safe, simple and understandable product. The KIID has contributed to providing retail investors with a more understandable summary of the product they are buying than was the case with the simplified prospectus, which now allows products to be compared much better. The PRIIPs regulation goes in the same direction. But to be efficient the framework must be well adapted to the purpose it intends to achieve and overregulation should be avoided.

Besides transparency and simplification another tool might be product comparators as we see in the non-financial space (trip advisor, etc.) which are based on standardised criteria and which allow customers to obtain an understanding for financial products and may help them to learn comparing and selecting products that are suitable for them. Such comparators are expected to develop with the broader adoption of digital distribution of financial products.

ALFI also believes that customers' best interest is not necessarily to be provided with financial products which would meet these three (safe, simple and understandable) characteristics at the same time. Safety does not necessarily mean simplicity or more exactly, complexity does not necessarily mean absence of safety.

Also, the term "customer" is broad and should not be limited to average retail investors. Some customers may need more complex products.

Customers need to have access to the same broader choice of financial products throughout the European Union. The key point is however to ensure that every customer may be provided with a financial instrument or product which meets its needs and that he does understand. Hence ensuring better access to financial products goes with appropriate and proportionate selling rules (MIFID), equivalent level of information for the different products (permitting comparability) but also with better investors education.

In the current context of low interest rates, the EU Commission may also consider extending access of the retail public to non UCITS products. UCITS do have and need to have an important place but they need to be complemented by other types of investment products to provide investors with the investment opportunities that are required to cover longer term needs (e.g. old age pension needs).

7. Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?

ALFI believes that the quality of enforcement across the EU is currently not perceived as an important influencing factor for consumer trust and market integration.

Powers of Host State regulators in terms of assessment of compliance of financial products approved by other States regulators as well as gold-plating should be limited.

Principle based regulations should be adopted and leave freedom to adapt these rules to specific situations taking into account proportionality and subsidiarity.

Consumer trust will be developed with better access to a broad product range and increasing product transparency and comparability. The recent re-regulation agenda of the EU has aimed at harmonizing sanctioning regimes to achieve a more level playing field between Member States together with a more harmonized supervisory approach by the creation of the three EU supervisory authorities. These changes need to bed down before additional actions at an EU level are suggested.

Overlap and duplication of regulation should also be avoided. As a matter of example, MIFID II rules and more particularly the ones relating to corporate governance should take into consideration the fact that many investment funds (UCITS and at least regulated AIF) are already covered by a certain level of rules imposed by the relevant product regulation itself (UCITS, AIFMD or other local product rules) in terms of product assessment (determination of investment terms, SRI,...) and disclosure (KIID, PRIIPs, other compulsory disclosures in the pre-contractual documents). Most often, the manufacturer does not have any single link with the ultimate beneficial owner. Imposing a definition of targeted market within too refined terms would definitely deprive new products offers. In the same context, targeted market identification is supplemental to the suitability/appropriateness test which relies on the financial institution having investors' direct contact. Duplication should be avoided.

8. Is there other evidence to be considered or are there other developments that need to be taken into account in relation to cross-border competition and choice in retail financial services?

ALFI believes that delimitations between sectors (insurance, investment funds, debt issues) should be waived. Creating a level playing field between insurance based and financial products where the same products are sold into the same markets. It should be noted that in several financial markets different products are offered to the same group of clients: for example, insurance or pension products offering a capital or biometric guarantee are not on the same playing field as asset management products, which offer no such guarantee.

PRIIPs is a good initiative but which may be further enhanced.

In addition, ALFI sees the need to increase the product offer to the retail market with other types of products including the creation of a type of semi-professional consumers.

Competition is good to ensure a better offer and choice for the consumer. The regulatory framework for financial services should avoid unnecessary regulatory constraints.

Specific attention should also be paid to the surge in compliance costs which are a barrier to entry for new players with an impact on the diversity of financial product offers for consumers.

9. What would be the most appropriate channel to raise consumer awareness about the different retail financial services and insurance products available throughout the Union?

Many initiatives throughout Europe exist today whose aim is to educate retail investors on the types of investment vehicles available to them, along with the pros and cons of each (one such initiative is ALFI's www.understandinginvesting.org). These initiatives provide a good base for the base information, and have the advantage of being in place today.

But these initiatives often lack exposure to reach passively curious or actively seeking investors. Given the personal nature of investing, strong advertising presence on mainstream social media channels such as Facebook would enable targeting of demographic groups most likely to be interested in investing, and pair them with messages and content that would interest them on the sites that exist today. Younger demographics could be targeted by producing Instagram content that points to podcasts, infographics, and articles that again exist already today. Advert campaigns would also greatly improve traffic to this content, capturing the keywords most often searched for by the people looking for the information.

10. What more can be done to facilitate cross-border distribution of financial products through intermediaries?

Solutions via on-line tools should be supported as they seem the most obvious method of facilitating cross border distribution, i.e. facilitating the drawing together of different information from different sources to enable a proper comparison of different products. However it would seem best to let the market develop such methods and for these not to be legislated for, other than in terms of ensuring barriers are removed.

Other actions should be the reduction of gold-plating and diverging national interpretation of rules to create a uniform market.

11. Is further action necessary to encourage comparability and / or facilitate switching to retail financial services from providers located either in the same or another Member State? If yes, what action and for which product segments?

The legislator needs to ensure that all financial products (including structured products, insurance products,...) are subject to the same level of constraints and disclosures.

In particular, the PRIIPs legislation requires time for assessing whether further action is necessary.

12. What more can be done at EU level to tackle the problem of excessive fees charged for cross-border payments (e.g. credit transfers) involving different currencies in the EU?

No comment.

13. In addition to existing disclosure requirements, are there any further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions?

No comment.

14. What can be done to limit unjustified discrimination on the grounds of residence in the retail financial sector including insurance?

Please see above (our answers to questions 1 and 2, reduce gold-plating and diverging national implementation of harmonised rules.

15. What can be done at EU level to facilitate the portability of retail financial products – for example, life insurance and private health insurance?

ALFI agrees with EFAMA's statement on personal pensions. To increase portability we believe one should further focus on the issues of tax discrimination, administrative burden and complexity of cross-border pensions products and residency requirements to be able to benefit from a specific regime.

16. What can be done at the EU level to facilitate access for service providers to mandatory professional indemnity insurance and its cross-border recognition?

No comment

17. Is further EU-level action needed to improve the transparency and comparability of financial products (particularly by means of digital solutions) to strengthen consumer trust?

While information is available today about financial products, their make-up, profile, and objectives, it remains fragmented. The framework for high-level comparison is in place with the UCITS KIID and the upcoming PRIIPs KID, however the actual comparison is today left to the investor, and a manual exercise of comparison.

Resources do exist on some retail investment sites that allow for limited comparison between investment products, but side-by-side, or feature comparisons like one can compare software or cars or washing machines online don't exist on a large scale for financial products.

At an EU level, education would help this exercise, although it would need to be tied to the places where investors would be comparing, and be visible and easily-accessible at the moment they are making their comparisons.

In terms of building consumer trust, while information exists, encouraging easier accessibility of portfolio/strategy information would have a much more effective impact than concentrating on providing more information. In this information age, the information is there, but time to search for it, or request it is a luxury that most people do not have. Focusing on encouraging/supporting tools that gather, present, and simplify this information will go a long way to building trust with investors.

ALFI believes that the digital evolution can be helpful to improve investor education and understanding of financial products. However there is not necessarily a need for further EU legislation at this stage.

18. Should any measures be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation?

While it might be too soon, just weeks after its launch, to judge whether further measures should be taken to increase consumer awareness of FIN-NET, it will be essential to generate as much awareness as possible with consumers of its existence and especially when it can benefit them.

19. Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance? If not, what could be done to ensure this is the case?

Please see our answer under 18.

20. Is action needed to ensure that victims of car accidents are covered by guarantee funds from other Member States in case the insurance company becomes insolvent?

No comment.

21. What further measures could be taken to enhance transparency about ancillary insurance products and to ensure that consumers can make well-informed decisions to purchase these products? With respect to the car rental sector, are specific measures needed with regard to add-on products?

No comment.

22. What can be done at the EU level to support firms in creating and providing innovative digital financial services across Europe, with appropriate levels of security and consumer protection?

The EU Commission should have a deep understanding of the new technologies used in the financial services and create a favourable regulatory framework integrating these new technologies.

E.g. acceptance of the Digital AML/KYC check – Common European disclosure requirements allowing the cross border provisions of financial services – Common regulation regarding the digital Marketing material – A regulatory framework for the Crowdfunding, the robo-advisers...

23. Is further action needed to improve the application of EU-level AML legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?

The Fourth AML Directive (Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing) will facilitate identification of customers at a distance since non-face-to-face business relationships or transactions will no longer automatically trigger enhanced due diligence requirements, but constitute only one factor among others of potentially higher risks. In addition, the Fourth AML Directive considers non-face-to-face business relationships or transactions as a factor of potentially higher risks only where such relationships are entered into without certain safeguards, such as electronic signatures. In addition, eIDAS (Regulation (EU) no 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market) streamlines the rules on electronic signatures and electronic identification.

Whilst the Fourth AML Directive and eIDAS will thus facilitate the identification of customers at a distance and are heading into the right direction, additional action favouring the identification of customers as a distance should be taken, including measures ensuring the expansion and recognition throughout the EU of distance verification of information such as the use of video calls, the use of scanned documents, third party verification of identity and verification of documents, the development of e-identity schemes.

In practice, the application of different AML/KYC standards in Europe and the existence of local professional secrecy laws (under public law or contractual) make the repeated application of multiple standards necessary for the same client. The Joint AML Guidelines aim at creating common point of entry for AML/KYC at financial sector level, but do not include any harmonisation of non-face-to-face identification.

The use of at distance identification devices will be key in achieving the objective of identification of these business relationships, but will not be sufficient. The definition of detailed common KYC standards at EU level will be required to operationalize the identification processes, being it for physical or remote identification.

24. Is further action necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards?

The current certification system is perceived by the industry as being too complex and burdensome for retail customers and hence, one should indeed try to find more accessible solutions to allow retail investors to benefit from e-signature and e-ID.

Simon Legislators and regulators may help the development of e-ID by creating a framework in which authorised firms may provide services to investors (institutions and natural persons) upon the presentation of credentials in the form of a "digital financial passport". EU AML/KYC standards would require that suitable identification and authentication be performed upon each person to whom such a passport is issued. Thereafter, a useful framework would allow financial institutions to accept that passport (which would be based on appropriate cryptographic technology) as a lawful basis for transactions, including those performed at a distance.

25. In your opinion, what kind of data is necessary for credit-worthiness assessments?

No comment.

26. Does the increased use of personal financial and non-financial data by firms (including traditionally non-financial firms) require further action to facilitate provision of services or ensure consumer protection?

No comment.

27. Should requirements about the form, content or accessibility of insurance claims histories be strengthened (for instance in relation to period covered or content) to ensure that firms are able to provide services cross-border?

No comment.

28. Is further action required to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?

No comment.

29. Is further action necessary to encourage lenders to provide mortgage or loans cross-border?

No comment.

30. Is action necessary at EU level to make practical assistance available from Member State governments or national competent authorities (e.g. through 'one-stop-shops') in order to facilitate cross-border sales of financial services, particularly for innovative firms or products?

No comment.

31. What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?

No comment.

32. For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in the legislation of Member States?

ALFI follows the EFAMA position in respect of personal pension products where the barriers are such that a 2nd regime product seems the most reasonable way forward.

33. Is further action necessary at EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector?

No comment.

Appendix: Identification of the stakeholder

- Name and address of the respondent, relevant contact details (including e-mail address for contact):

Association of the Luxembourg Fund Industry

12, rue Erasme

L-1468 Luxembourg

Contact person for this consultation: Name and e-mail address

- If you are registered with the Commission as an "interest representative" your identification number:

6182372280-83

- Are you a recognised European social partner organisation or a representative of a European (sectoral) social dialogue committee?

No.

- Field of activity of the respondent. Please specify your field of activity. Please indicate if you are directly affected by any of the measures and if so, which one and to what extent:

ALFI is the official representative body for the Luxembourg investment fund industry. Being a non-profit organisation, ALFI is not directly affected by any of the measures.

- If the respondent is an association of stakeholders, how many members do you represent and what is your membership structure?

ALFI represents 1188 investment funds, 247 service provider and 19 associate members.

- Do you object to publication of personal data on the grounds that such publication would harm your legitimate interests?

No.

- Do you agree to having your response to the consultation published along with other responses?

Yes.