

Luxembourg, 16 December 2021

## **Response to the ESA call for evidence on the European Commission mandate regarding the PRIIPs Regulation**

### **Introduction**

The Association of the Luxembourg Fund Industry (ALFI) represents the face and voice of the Luxembourg asset management and investment fund community. The Association is committed to the development of the Luxembourg fund industry by striving to create new business opportunities, and through the exchange of information and knowledge.

Created in 1988, the Association today represents over 1,500 Luxembourg domiciled investment funds, asset management companies and a wide range of business that serve the sector. These include depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax advisory firms, auditors and accountants, specialised IT and communication companies. Luxembourg is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg domiciled investment funds are distributed in more than 70 countries around the world.

We thank the European Supervisory Authorities for the opportunity to participate in this call for evidence on the European Commission mandate regarding the PRIIPs Regulation.

### **Response to the consultation**

#### **Introduction**

**Question 1.** Please provide any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

#### **Answer:**

From the outset, ALFI has been commenting on any draft texts or consultations concerning the PRIIPs Regulation and its implementing rules at level 2 or 3. Two of our key messages were and still are to require a level playing field as regards product disclosures for investment products, and to rely on feedback gathered from investors in the context of consumer testing.

Moreover, we regret that the PRIIPs level 1 regulation was not reviewed at the same time as the corresponding level 2 regulation, as both are interconnected in a way that certain changes at level 2 were not possible because of an existing rule at level 1 (e.g. with respect to the presentation of performance).

For other general aspects, please also refer to our answer to question 40.

### **3.1 General survey on the use of the KID**

**Question 2.** Do you have, or are you aware of the existence of, data on the number, type and market share of different types of PRIIPs? If you have such data, would you be in a position to share it with the ESAs?

**Answer:**

We invite the ESA's to visit the [section on statistics](#) available on ALFI's website. While ALFI publishes figures for Luxembourg investment funds, statistics concerning Europe or the world are collected by [EFAMA](#).

**Question 3.** In your position as product distributor or financial advisor, to what extent do you make use of KIDs to choose or compare between the products you offer to your clients? In case of trading online, does your platform offer an automatised tool that can help the retail investor in making comparisons among products, for instance using KIDs?

**Answer:**

We are not in a position at this stage to provide any information on this, because our members are fund manufacturers, not product distributors or financial advisers. Information is provided in particular to insurance companies by the European PRIIPs Template (EPT). This may change in the future when the PRIIPs KID is produced for any kind of products.

**Question 4.** If this is the case, what is preventing distributors or financial advisors from using the KID when they choose a product for a client?

**Answer:**

We refer to our answer to question 3.

**Question 5.** In your experience, e.g. as a retail investor or association representing retail investors, to what extent are KIDs used by distributors or financial advisors to support the investment process? Is marketing material used instead or given greater emphasis?

**Answer:**

Both the PRIIPs KID and the UCITS KIID are pre-contractual documents which have to be handed over to investors before an investment decision is taken. The fund manufacturer makes sure that the PRIIPs KID and/or UCITS KIID, depending on the type of fund, is provided to the distributor, who gives it to retail investors. We are not in a position to assess the general use of it by the retail investor, or in comparison to marketing material.

**Question 6.** What are your experiences regarding the extent of the differences between marketing information and the information in the KID? What types of differences do you consider to be the most material or relevant in terms of completeness, plain language, accuracy and clarity? What do you think might be the reason(s) for these differences?

**Answer:**

Generally, we think retail investors may rather rely on other marketing material (like factsheets), as it partly includes more targeted information and less references to the prospectus (e.g. as regards risks and performance presentation). It is worth noting that the recently adopted ESMA guidelines on marketing communications steadily repeat the consistency requirement across disclosure documents.

### **3.2 General survey on the operation of the comprehension alert**

**Question 7.** What are your experiences regarding the types of products that include a comprehension alert?

**Answer:**

From a fund perspective, our members report that the alert is shown on the KID when indices are used or in case of structured funds. Generally, we question the necessity of the comprehension alert, as it is largely redundant with the investor profile in the “What is the product?” section that is more specific. Moreover, MiFID rules prevent to sell “complex” products to retail investors with only basic knowledge.

**Question 8.** Do you have or are you aware of the existence of data on the number and type of products that include a comprehension alert? If you have such data, would you be in a position to share it with the ESAs?

**Answer:**

We have no confirmed statistics on this, but we assume almost all alternative investment funds will have to include a comprehension alert, given its broad scope.

**Question 9.** What are your experiences regarding the extent to which retail investors take into account the inclusion of the comprehension alert?

**Answer:**

We think the comprehension alert is not really helpful to investors (see our answer to question 7). We are not in a position to assess whether retail investors are able to consider this information in an appropriate way.

**Question 10.** As a retail investor or association representing retail investors, are you aware of the existence of a comprehension alert for some PRIIPs?

**Answer:**

Given that we represent product manufacturers, we leave it to retail investors and their associations to answer this question.

**Question 11.** What are your experiences regarding the extent to which financial advisors consider the comprehension alert?

**Answer:**

As association representing product manufacturers, we are unable to provide feedback on this. We would assume that financial advisers rather look at the SRI as reliable feature.

### **3.3 Survey on the practical application of the rules**

**Question 12.** For PRIIP manufactures or sellers:

12.a) Please describe the different types of costs incurred to comply with the PRIIPs Regulation.

**Answer:**

The following different types of costs are typically incurred by fund managers to comply with the PRIIPs Regulation:

- Costs for the production of the KID, in-house or outsourced (including costs for people overhead);
- Expenditure for translations;
- Expenditure for data collection;

- Expenditure for calculation;
- Expenditure for third party data (transaction costs, risk, tick data/benchmark data, look through in case of target funds/fund of funds);
- Expenditure for adapting systems and processes;
- Costs for the filing and provision of the KID to investors (including furnishing of websites etc.)
- Costs needed to produce collateral outputs (EPT, CEPT, past performance document, previous performance scenarios calculations).

12.b) Can you provide an estimate of the average costs per PRIIP of complying with the requirements of the PRIIPs Regulation? Where possible, please provide a breakdown between the main types of costs, e.g. manufacturing, reviewing, publishing, etc.

**Answer:**

We are unable to provide an estimate of the average costs. The costs are usually twofold:

- Costs to enable PRIIP MOP manufacturers to produce PRIIPs compliant data and make these available by the fund manufacturer
- Costs to produce an actual PRIIP KID for the fund.

12.c) Can you provide an estimate of what proportion of the total costs for the product are represented by the costs of complying with the PRIIPs Regulation?

**Answer:**

Costs depend very much on the type of the product/fund, which is why it is difficult to provide concrete figures. Total costs are mainly based on the costs for the production, calculation and distribution of the KID. Transaction costs are relatively high compared to other components.

**Question 13.** What are your experiences regarding the extent to which the PRIIPs Regulation is applied in a consistent manner across the EU for the most commonly sold types of PRIIPs? What are the main areas of inconsistencies?

**Answer:**

The main area of inconsistency is in our view the calculation of transaction costs, because it can be based on different aspects.

### **3.4 Use of digital media**

**Question 14.** Do you have or are you aware of the existence of data on the use of different media? If you have such data, would you be in a position to share it with the ESAs?

**Answer:**

We think that physical (printed) papers are used to a much lesser extent than electronic versions.

**Question 15.** What are your experiences as a product manufacturer or product distributor or financial advisor regarding the preferred media for retail investors to access or read the KID? Are there challenges for retail investors to receive the KID in their preferred media, such as due to a certain medium not being offered by the distributor?

**Answer:**

Electronic versions (notably PDF documents) are mainly used, and paper versions can be handed over upon request. We are not aware of any issues from a retail investor perspective.

**Question 16.** How do you as a retail investor, or association representing retail investors, prefer to receive or view the KID?

**Answer:**

Given that we represent product manufacturers, we leave it to retail investors and their associations to answer this question.

**Question 17.** What are your experiences regarding the preferred media for product distributors and financial advisors when using the KID?

**Answer:**

Electronic versions (PDF documents) are the preferred medium.

**Question 18.** Should changes be made to the PRIIPs Regulation so that the KID is better adapted to use on different types of media?

**Answer:**

We think the use of electronic PDF documents is appropriate. To avoid the risk that information is overlooked by the investor, we think it is important to wrap the information in a durable document. Moreover, this document should include the production date to clearly show whether the information is still valid or outdated.

**Question 19.** Do you think it would be appropriate to apply the approach taken in the PEPP Regulation 2019/1238 (highlighted above) to the PRIIPs KID?

**Answer:**

We think that practitioners are not ready for a layering approach. Moreover, we think there is a higher risk that (hidden) aspects are not properly updated. We are also unsure about the handling of printing requests in case pop-ups are applied.

### **3.5 Scope of the PRIIPs Regulation**

**Question 20.** Do you think that the scope of the PRIIPs Regulation should be extended to any of the products referred to in Article 2(2), points (d), (e) and (g)? Please explain your reasoning.

**Answer:**

In line with the regulation's name ('packaged retail and insurance-based investment products' regulation), we think only wrapped products should be in scope, i.e. securities should remain out of the scope.

On the other hand, we are clearly in favour of a level playing field as regards disclosure requirements for packaged investment products. Investors should be able to compare the different investment options and product manufacturer should be subject to comparable requirements. As regards pension products, the PEPP KID or a similar pension KID taking into account the specific features of these investment products should be provided to investors. As a result, the scope of the PRIIPs Regulation could then remain unchanged.

**Question 21.** Do you think that the scope of the PRIIPs Regulation should be changed with respect to other specific types of products and if so, how?

**Answer:**

We refer to our answer to question 20.

**Question 22.** Do you think changes should be made to specify more precisely which types of financial instruments fall within the scope of the PRIIPs Regulation? Please specify the amendments that you think are necessary to the Regulation.

**Answer:**

There is a common understanding in the fund industry about the products that are in scope of the PRIIPs Regulation. Therefore, we do not see a need for clarification.

**Question 23.** Do you have specific suggestions regarding how to ensure that the scope of the PRIIPs Regulation captures packaged or wrapped products that provide an indirect exposure to assets or reference values, rather than assets which are held directly?

**Answer:**

We think that packaged or wrapped products that provide an indirect exposure to assets or reference values are already captured by the PRIIPs Regulation. Generally, definitions should to be taken from sector-specific legislation before introducing new concepts.

**Question 24.** Do you agree with the ESA Supervisory Statement relating to bonds and what are your experiences regarding the application of the Statement?

**Answer:**

Apart from what we mentioned in our answer to question 20, we have no further comments on unwrapped products like bonds.

**Question 25.** Do you think that the definitions in the PRIIPs Regulation relating to the scope should take into account other elements or criteria, e.g. relating to the maturity of the product, or relating to a product only having a decumulation[1] objective, or where there is not active enrolment[2]?

[1] For example an annuity.

[2] This might include, for example, employment based incentive schemes

**Answer:**

We would highly recommend to provide further guidance with regard to the scope of the PRIIPs Regulation and target investors. All retail investors should get a KID, while there should not be a requirement to hand over a KID to institutional investors.

**Question 26.** Do you think that the concept of products being “made available to retail investors” (Article 5(1) of the PRIIPs Regulation) should be clarified, and if so, how?

**Answer:**

No, we do not think that further clarification is needed.

**Question 27.** Do you think it would be beneficial to develop a taxonomy of PRIIPs, that is, a standardised classification of types of PRIIPs to facilitate understanding of the scope and that could also be used as a basis for the information on the “type of the PRIIP” in the ‘What is this product?’ section of the KID (Article 8(3)(c)(i) of the PRIIPs Regulation)? If yes, do you have suggestions for how this could be done?

**Answer:**

Generally, legal definitions or even full taxonomies can be helpful provided they are clear and unambiguous (do not leave room for interpretation). With regard to the PRIIPs Regulation, we think its scope is clear, so no further definition of terms is needed.

### **3.6 Differentiation between different types of PRIIPs**

**Question 28.** Do you think that the current degree of standardisation of the KID is detrimental to the proper understanding and comparison of certain types of PRIIPs? If so, which products are concerned?

**Answer:**

It has been a steady request from the fund industry to show (only) past performance in the KID for linear products like investment funds. We welcome that information on past performance will in the future be available via a link in the KID, but we have clear doubts whether retail investors will really access this important information. Therefore, it would be crucial to include it in the KID itself. Given that the calculations used to show future performance scenarios have been improved, the latter could be shown also in case of linear products, but considering remaining uncertainties in terms of predictions it would be preferable to adapt the wording by using e.g. the terms 'illustrative future scenarios', and to include a disclaimer stating that both sets of information are based on the same set of data.

It is difficult for retail investors to understand information disclosed for short-term products with a short recommended holding period (RHP) and that shown for long-term products with a long RHP. It would be better to offer specified narratives linked to the respective RHP.

**Question 29.** Do you think that greater differentiation based on the approaches highlighted above, is needed within the PRIIPs Regulation? If so what type of approach would you favour or do you have alternative suggestions?

**Answer:**

We refer to our answer to question 28. Moreover, the development of broad product groupings or buckets of similar products would allow manufacturers to disclose the most relevant information for different buckets.

**Question 30.** Do you have suggestions for how a product grouping or product buckets could be defined?

**Answer:**

For investment funds, we refer to our answers to questions 28/29. The need for different disclosures in costs and performance indicators is a way to bucket investment products.

### **3.7 Complexity and readability of the KID**

**Question 31.** Would you suggest specific changes to Article 8 of the PRIIPs Regulation in order to improve the comprehensibility or readability of the KID?

**Answer:**

It has been a steady request from the fund industry to show (only) past performance in the KID for linear products like investment funds. We welcome that information on past performance will in the future be available via a link in the KID, but we have clear doubts whether retail investors will really access this important information. Therefore, it would be crucial to include it in the KID itself. Given that the calculations used to show future performance scenarios have been improved, the latter could be shown also in case of linear products, but considering remaining uncertainties in terms of predictions it would be preferable to adapt the wording by using e.g. the terms 'illustrative future scenarios', and to include a disclaimer stating that both sets of information are based on the same set of data.

In addition, we believe a risk disclosure consisting only of the SRI, its disclaimer text and a reference to the prospectus does not allow for an adequate description of a product's risks. We recommend to increase the narrative space available in order to allow for the main risks to be briefly described, at the very least be named.

**Question 32.** How could the structure, format or presentation of the KID be improved e.g. through the use of visual icons or dashboards?

**Answer:**

With regard to the overall presentation, we think that the PRIIPs KID guidelines are reasonable and do not include major design flaws. We would strongly recommend not to use icons or dashboards that will not only burden the layout, but that will also likely create confusion among readers. The document is short and its section headers are clear enough for not adding "bells and whistles".

### **3.8 Performance scenarios and past performance**

**Question 33.** Do you agree with the ESAs' assessment in the Final Report (JC 2020 66) regarding the treatment of past performance?

**Answer:**

It has been a steady request from the fund industry to show (only) past performance in the KID for linear products like investment funds. We welcome that information on past performance will in the future be available via a link in the KID, but we have clear doubts whether retail investors will really access this important information. Therefore, it would be crucial to include it in the KID itself. Given that the calculations used to show future performance scenarios have been improved, the latter could be shown also in case of linear products, but considering remaining uncertainties in terms of predictions it would be preferable to adapt the wording by using e.g. the terms 'illustrative future scenarios', and to include a disclaimer stating that both sets of information are based on the same set of data.

**Question 34.** Would you suggest changes to the requirement in Article 8(3)(d)(iii) of the PRIIPs Regulation concerning the information on potential future performance, and if so what would you specifically change in the Regulation?

**Answer:**

We refer to our answer to question 33.

### **3.9 PRIIPs offering a range of options for investment (Multi-Option Products ("MOPs"))**

**Question 35.** Would you be in favour of requiring a KID to be prepared for each investment option (in accordance with 10(a) of the PRIIPs Delegated Regulation) in all cases, i.e. for all products and for all investment options<sup>[1]</sup>? What issues or challenges might result from this approach?

[1] This approach assumes complete investment in a single investment option and requires the KID to include all costs.

**Answer:**

Requiring a KID for each investment option would increase transparency in terms of the exact investment choice of the investor, because it reflects the particular investment under an insurance product and with that the characteristics of both would be presented in one document. However, from a PRIIP manufacturer's perspective, this approach would increase the amount of documents to be maintained, and also the efforts to keep them updated (e.g. for 10 insurance products with each having 100 investment options this would imply to manage 1000 documents, whereas under the



Article 10b) approach only 110 documents would have to be managed – assuming the same language and the same investment type is used). This high number of documents could cause issues identifying the exact product-investment-option-combination when presenting KIDs on the web and investors searching for the right one.

**Question 36.** Would you be in favour of requiring an approach involving a general product information document (along the lines of a generic KID) and a separate specific information document for each investment option, but which avoids the use of cost ranges, such as either:

- A specific information document is provided on each investment option, which would include inter alia all the costs of the product, and a generic KID focusing more on the functioning of the product and which does not include inter alia specific information on costs?; or
- The costs of the insurance contract or wrapper would be provided in a generic KID (as a single figure) and the costs of the underlying investment option (as a single figure) would be provided in the specific information document?

What issues or challenges might result from these approaches?

**Answer:**

Displaying a combination of the product costs and investment option costs would de facto result in an Article 10a) approach. Here the challenge lays in the increased number of documents to be maintained, because a KID for one ISIN that is assigned to different products (with different cost structures) needs to be generated two times containing the information for each of the product individually. On the other hand, it will increase transparency, comparability and understanding of costs.

A good approach would be to keep the ranges on the product KID as the result of aggregating the costs from the underlying investment options, and in addition to that, express the costs on the Specific Information Document as a combined number for product and investment (rather than only the investment).

**Question 37.** Do you see benefits in an approach where KIDs are prepared for certain investment profiles or standard allocations between different investment options, or for the most commonly selected options? In this case, what type of information could be provided regarding other investment options?

**Answer:**

The biggest benefit would be the reduced number of items to be processed (source European PRIIPs Template, calculate performance and costs, produce KID). It would be easier to have a few profiles (e.g. cautious, balanced and dynamic) and assign underlying investment options according to their characteristics to one of the profiles. The degree of details to be provided will decrease, and so will the comparability and transparency. In any case this would require more regulatory guidance to keep the purpose of the PRIIPs Regulation by setting and keeping transparency and comparability on a high level.

**Question 38.** Do you have any other comments on the preferred approach for MOPs and or suggestions for changes to the requirements for MOPs in the PRIIPs Regulation?

**Answer:**

In the fund industry, the exchange of information between fund managers and insurance companies is done via the European PRIIPs Template (EPT). It would be helpful if this European standard was applied consistently across jurisdictions, i.e. there should not be any other national templates to be filled in, as it is e.g. the case for Luxembourg insurance products. The Luxembourg Insurance Association (ACA) has notably designed the so called 'Luxembourg PRIIPs Template' (LPT) to collect information on the investment/profiles from discretionary portfolio managers. It should serve as an

alternative to the EPT for Dedicated Funds, Internal Collective Funds or Specialised Insurance Funds. However, it causes confusion among asset managers with respect to the proper population of such templates, resulting in partially incomplete or insufficient information.

Furthermore, this may set a signal to other markets to apply as well market-specific practice to exchange information leading to reduced comparability, because the same investment options may be presented differently depending on local requirements. In addition to one common standard of exchanging PRIIPs-related information, it would be good if the recommendations published by the FinDatEx group would be obeyed by all market participants. Some asset managers have been sharing partially populated EPTs instead of providing column headers for optional columns, others have chosen to provide a different column separator than the one defined in the EPT. Non-mandatory recommendations lead to reduced market efficiencies and an increase in overhead of communications and clarifications between EPT distributors and recipients.

### **3.10 Alignment between the information on costs in the PRIIPs KID and other disclosures**

**Question 39.** Taking into account the proposals in the ESAs' final draft RTS, do you consider that there are still other inconsistencies that need to be addressed regarding the information on costs in the KID and information disclosed according to other retail investor protection frameworks?

**Answer:**

We think that the revised Regulatory Technical Standards on PRIIPs addressed certain issues, but still a number of other points should be addressed by a broader review.

For example, numerous inconsistencies still exist between MiFID/IDD and PRIIPs in how product cost information is calculated and presented to investors. MiFID uses a zero-return assumption while the PRIIPs Regulation uses the cost disclosures tied to future performance scenarios. Different cost disclosures are confusing for the investor and create mistrust in financial products.

The overarching MiFID and IDD frameworks should provide the overall cost disclosure points and methodologies, which could then be inserted into the PRIIPs KID.

Moreover, both MiFID and the PRIIPs Regulation require the disclosure of transaction costs. The definition in MiFID (and IDD) explicitly forbids the inclusion of "market movements" as a cost. The PRIIPs RTS, however, have come up with a calculation methodology referred to as "arrival price" (also known as "slippage"), which considers certain market movements as a transaction cost. While the arrival price methodology incorporates certain fundamental flaws that could be rectified only to a certain degree by the revision of the PRIIPs RTS, it is essential to point out again that it can result in misaligned transaction cost disclosures under PRIIPs and MiFID.

Beyond cost information, risk disclosures are also inconsistent. MiFID does not contain a standardised risk measure like the PRIIPs' Summary Risk Indicator (SRI). This being said, it could be used for risk disclosure purposes under MiFID, creating necessary alignment for retail investors.

Moreover, each of the frameworks provides retail investors with a contradicting view on performance. On the one hand, MiFID II (through its delegated acts) requires product manufacturers to provide investors with an explanation on the "functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions". If past performance is shown, it must carry a clear warning to investors highlighting that past performance does not constitute future returns. On the other hand, the current PRIIP KID requires future performance scenarios, in essence transposing past performance into the future. This situation will be slightly remedied by the revised PRIIPs RTS, which will allow funds to produce product performance scenarios based on historical instead of future scenarios.

### **3.11 Other issues**

**Question 40.** Do you think that other changes should be made to the PRIIPs Regulation? Please justify your response.

**Answer:**

It is worth noting that the PRIIP level 1 Regulation (notably Article 8(3)(c)(ii)) requires disclosures on specific environmental or social objectives targeted by the product, but – despite Article 8(4) – there is no specification at level 2 on how this should be done. It would be important to have clear guidance by the ESAs/European Commission.

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