Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products as regards the date of its application'

(COM(2016) 709 final — 2016/0355 (COD))

(2017/C 075/08)

Rapporteur-general: **Daniel MAREELS**

Consultation	Council, 17.11.2016
	European Parliament, 21.11.2016
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible:	Single Market, Production and Consumption
Date of President's decision	17.11.2016 (Rule 57 urgency procedure)
Adopted at plenary	14.12.2016
Plenary session No	521
Outcome of vote	152/1/2
(for/against/abstentions)	

1. **Conclusions and recommendations**

1.1. In the circumstances and subject to the conditions set out below, the EESC can accept the Commission's proposal that the date of application of the PRIIPs ([1]) Regulation be deferred by one year until 1 January 2018.

1.2. The PRIIPs Regulation contains measures that aim to provide better protection for retail customers and investors and to rebuild consumer trust in the financial services industry by increasing transparency in the retail investment market. In particular, it requires manufacturers of packaged retail and insurance-based investment products (PRIIPs) to produce a KID ([2]).

1.3. The deferral was requested by the European Parliament and a majority of Member States, after a Commission 'delegated act' ([3]) on PRIIPs was rejected by the European Parliament on 14 September 2016. The aim of the delegated act was to lay down regulatory technical standards for KIDs for PRIIPs, on the basis of the drafts developed by the European Supervisory Authorities.

([1]) PRIIPs are 'packaged retail and insurance-based investment products'.

([2]) KID stands for 'key information document'.

([3]) Delegated acts were introduced by the Lisbon Treaty. Article 290 of the TFEU allows the EU legislator (generally the European Parliament and the Council) to delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.
For example, delegated acts may add new (non-essential) rules or involve a subsequent amendment to certain aspects of a legislative act. The legislator can thus concentrate on policy direction and objectives without entering into overly detailed and often highly technical debates.
The delegation of power to adopted delegated acts is nevertheless subject to strict limits. Indeed, only the Commission can be empowered to adopt delegated acts. Furthermore, the essential elements of an area may not be subject to a delegation of power. In addition, the objectives, content, scope and duration of the delegation of power must be defined in the legislative acts. Lastly, the legislator must explicitly set in the legislative act the conditions under which this delegation may be exercised. In this respect, the Parliament and the Council may provide for the right to revoke the delegation or to express objections to the delegated act. See http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Aai0032

1.4. The EESC has previously adopted an opinion ([4]) welcoming the development of PRIIPs and highlighting the importance of this legislation, which for the first time regulates all types of complex financial product and ensures they are comparable, regardless of the type of manufacturer — bank, insurer or investment company.

1.5. In that opinion, the Committee also called for the creation of a single financial market with clear, accurate, straightforward and comparable information, and for a uniform, simplified and standardised information system that would ensure that such information is comparable and comprehensible, increasing market transparency and efficiency ([5]).

1.6. The Committee takes the view that, if the application of the regulation had not been deferred, the main objectives set in this field (see above and below) could have been compromised, which would have been extremely unfortunate. The Committee agrees that the increased transparency provided by the PRIIPs Regulation and the harmonisation of the information provision requirements will benefit the internal market in financial services by creating a level playing field among different products and distribution channels. The regulation will therefore not only benefit retail customers and investors, but also help to restore consumer confidence in the financial services sector. Furthermore, the rejection of the delegated act less than four months before the texts entered into application would have led to legal uncertainty and major implementation problems for market operators.

1.7. With regard to the choice of a period of one year, the Committee considers this to be acceptable for the same reasons, all the more so given that its entry into force will now coincide with that of the new MiFID II package. The Committee would stress, however, that this deferral must remain a one-off exception and that the intervening period must be used to adopt and publish the definitive delegated act as soon as possible. It is, after all, important to provide clarity and certainty as soon as possible, both for market operators and for retail customers and investors.

1.8. In the Committee's view, this must not jeopardise the objectives and achievements of the PRIIPs Regulation. Any amendments made to the delegated act therefore need to fit into that framework. All the more so since the review of the PRIIPs Regulation will be carried out after only one year and any issues can be raised at that time, in the light of the initial implementation and supervisory experiences. The aforementioned amendments should, from the outset, effectively contribute to increasing consumer trust. At the same time they should remain consistent with the rules to be laid down in the future MiFID package.

2. **Background**

2.1. Regulation (EU) No 1286/2014 of the European Parliament and of the Council ([6]) (the PRIIPs Regulation) introduced measures to improve transparency in the retail investment market. More specifically, it requires manufacturers of PRIIPs to draw up KIDs.

2.2. The regulation gives the European Supervisory Authorities ([7]) (ESAs) the power to prepare regulatory technical standards (RTSs) detailing the elements of the KID.

2.3. After the ESAs had sent their joint draft of the aforementioned standards to the Commission, the latter adopted the delegated act effectively implementing the RTSs at the end of June 2016.

2.4. In its resolution of 14 September 2016, the European Parliament raised objections to the delegated act adopted by the Commission ([8]). The EP called on the Commission to review the provisions relating to multi-option PRIIPs, performance scenarios and comprehension alert.

2.5. Moreover, the European Parliament and a large majority of Member States asked for the date of application of the regulation to be deferred.

([4]) See EESC opinion (OJ C 11, 15.1.2013, p. 59, point 1.2).
([5]) See opinion referred to in footnote 4, points 3.2 and 2.3.
([6]) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).
([7]) The ESAs are the European Insurance and Occupational Pensions Authority, the European Banking Authority and the European Securities and Markets Authority.
([8]) See http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0347+0+DOC+XML+V0//EN

2.6. The current proposal for a regulation proposes deferring the date of application of the regulation by one year, to 1 January 2018.

3. **Observations and comments**

3.1. Overall, the PRIIPs Regulation serves to improve protection for retail customers and investors, particularly those who invest in PRIIPs. The proposed increase in transparency and the harmonisation of the information provision requirements will also benefit the internal market in financial services by creating a level playing field among different products and distribution channels. This will also further restore consumer confidence in the financial services industry.

3.2. In order to fulfil these objectives, the regulation requires that PRIIPs manufacturers comply with a uniform set of product disclosure requirements and that retail customers and investors receive the KID on the offered PRIIPs. This should enable retail investors to better understand the economic nature and risks of a particular product and to compare different offers.

3.3. In its original form, the regulation is intended to enter into application at the end of 2016. In principle, the same date also applies to the 'implementing measures' adopted by the Commission by delegated act in the middle of this year, based on the ESAs' draft RTSs. The RTSs specify the presentation and content of the KID, the standardised format of the KID, the methodology underpinning the presentation of risk and reward and the calculation of costs, as well as the conditions and the minimum frequency for reviewing the information contained in the KID and the conditions on fulfilling the requirement to provide the KID to retail investors.

3.4. While the Council raised no objections to the Commission's delegated act during the scrutiny period, the EP rejected the text in a resolution on 14 September 2016 ([9]).

3.5. Although the PRIIPs Regulation is directly applicable as of the end of 2016 and the production of a KID is not linked to the adoption of the delegated act, the EP at the same time requested that its application date be postponed. A large majority of Member States also made the same request for deferral, pointing out that the absence of technical standards would hinder the smooth application of the regulation.

3.6. In these circumstances, the EESC can endorse the principle of deferring the date of application of the regulation. There would otherwise be a risk of the main objectives set (see above and below) not, or not fully, being achieved. Furthermore, the delegated act was rejected less than four months before the texts would have entered into application, which would have led to legal uncertainty and major implementation problems for market operators.

([9]) The resolution rejected the delegated act on the following grounds:

'A. whereas it is essential that consumer information on investment products is comparable in order to promote a level playing field in the market no matter what type of financial intermediary manufactures or markets them;

B. whereas it would be misleading to investors to remove credit risk from the calculation of risk categorisation of insurance products;

C. whereas the treatment of multi-option products still needs to be clarified, in particular in relation to the explicit exemption granted to UCITS funds under Regulation (EU) No 1286/2014;

D. whereas the delegated act as adopted by the Commission contains flaws in the methodology for the calculation of future performance scenarios and does not therefore fulfil the requirement under Regulation (EU) No 1286/2014 to provide information which is "accurate, fair, clear and not misleading" and, in particular, does not show for some PRIIPs, even in the adverse scenario, and even for products which have regularly led to losses over the recommended minimum holding period, that investors could lose money;

E. whereas the lack of detailed guidance in the delegated regulation on the "comprehension alert" creates a serious risk of inconsistent implementation of this element in the key information document across the single market;

F. whereas Parliament remains of the view that further standardisation of when the comprehension alert will be used should be introduced as an additional RTS mandate;

G. whereas, left unchanged, there is a risk that the rules set out in the delegated regulation go against the spirit and aim of the legislation, which is to provide clear, comparable, understandable and non-misleading information on PRIIPs to retail investors;

H. whereas in the letter of 30 June 2016 sent to the Commission by the Chair of the Committee on Economic and Monetary Affairs, Parliament's negotiating team asked the Commission to assess whether the implementation of Regulation (EU) No 1286/2014 should be delayed;'.

3.7. Moreover, the EESC points to its previous opinion on PRIIPs, in which it welcomed the proposals made and the approach taken ([10]). In that opinion, the Committee highlighted the importance of this legislation, which for the first time regulates all types of complex financial product and ensures they are comparable, regardless of the type of manufacturer — bank, insurer or investment company.

3.8. The Committee also called in this connection for the creation of a single financial market with clear, accurate, straightforward and comparable information ([11]), and stated that a uniform, simplified and standardised information system would ensure that such information is comparable and comprehensible, increasing market transparency and efficiency ([12]). The Committee would now add that the future RTSs should, from the outset, effectively contribute to increasing consumer trust. Thus, it needs to be clear to consumers which products are complex, they should be able to make informed decisions, and there should be a focus on cost and return. In order to avoid inconsistencies, account should be taken of the rules that will be laid down in the future provisions of the MiFID Regulation ([13]).

3.9. The Committee also considers the choice of a period of one year to be acceptable, on condition that the deferral remains a one-off exception and that the intervening period is used to adopt and publish the definitive delegated act. This should be done in the shortest possible time in order to provide clarity and certainty for market operators, retail customers and investors as soon as possible.

3.10. Moreover, by opting for a period of one year, the entry into force of the PRIIPs Regulation will again coincide with the entry into force of the MiFID II Regulation ([14]) which will also benefit consumers. The entry into force of MiFID II was previously also deferred by one year ([15]) — a deferral that was approved by the Committee ([16]).

3.11. This must not jeopardise the abovementioned objectives, which the Committee endorses. Any amendments made to the delegated act therefore need to fit into the current PRIIPs framework.

3.12. As regards the other elements, and insofar as may be necessary, it would seem more appropriate to await the review of the PRIIPs Regulation, which, owing to this proposed postponement, will now happen only one year after the regulation comes into effect ([17]). It will be possible at that stage to take account of the initial implementation and supervisory experiences.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

([10]) See opinion referred to in footnote 4, point 1.2.
([11]) See opinion referred to in footnote 4, point 3.2.
([12]) See opinion referred to in footnote 4, point 2.3.
([13]) See Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).
([14]) The new MiFID II package will enter into force on 3 January 2018. That is two days after the date laid down in the current proposal to amend the new PRIIPS Regulation.
([15]) See the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories as regards certain dates, COM(2016) 57 final — 2016/0034 (COD) (http://eur-lex.europa.eu/legal-content/FR/TXT/?qid=1486717110458&uri=CELEX:52016PC0057).
([16]) The EESC endorsed postponing the entry into force of MiFID II, see EESC opinion (OJ C 303, 19.8.2016, p. 91).
([17]) See Article 33 of the PRIIPs Regulation, which is not changed by the proposal under consideration. That Article provides for a review of the regulation 'by 31 December 2018'.