

# Response form for the Joint Consultation Paper concerning amendments to the PRIIPs KID





## Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out proposed amendments to Commission Delegated Regulation (EU) 2017/653 of 8 March 2017<sup>1</sup> (hereinafter “PRIIPs Delegated Regulation”).

The consultation package includes:

- The consultation paper
- Template for comments

The ESAs invite comments on any aspect of this paper. Comments are most helpful if they:

- contain a clear rationale; and
- describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of Regulation (EU) No 1286/2014<sup>2</sup> (hereinafter “PRIIPs Regulation”).

## Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESA\_QUESTION\_PKID\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your response, name your response form according to the following convention: ESA\_PKID\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA\_PKID\_ABCD\_RESPONSEFORM.

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<sup>1</sup> COMMISSION DELEGATED REGULATION (EU) 2017/653 of 8 March 2017 supplementing 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 (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents

<sup>2</sup> 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.

- The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the [ESMA website](#) under the heading 'Your input - Consultations' by **13 January 2020**.
- Contributions not provided in the template for comments, or after the deadline will not be processed.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

### Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725<sup>3</sup>. Further information on data protection can be found under the [Legal notice](#) section of the EBA website and under the [Legal notice](#) section of the EIOPA website and under the [Legal notice](#) section of the ESMA website.

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<sup>3</sup> Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

## General information about respondent

Name of the company / organisation	The Association for Financial Markets in Europe
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

## Introduction

**Please make your introductory comments below, if any:**

<ESA\_COMMENT\_PKID\_1>

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76

### General

While AFME is responding only to questions 8 and 26 of the consultation, we would like to use this response to provide feedback on the Joint ESA Supervisory Statement on the application of scope of the PRIIPs Regulation to bonds, which was published on 24 October 2019.

### AFME Comments on the Joint ESA Supervisory Statement on the application of scope of the PRIIPs Regulation to Bonds

AFME Members welcomed the statement from the ESAs on the scope of the PRIIPs Regulation to corporate bonds and note that the Statement recommends that during the upcoming review of the PRIIPs Regulation, the co-legislators introduce amendments to the PRIIPs Regulation: (i) to specify more precisely which financial instruments fall within the scope of the PRIIPs Regulation; and (ii) to reflect more expressly the stated intention of the PRIIPs Regulation to address packaged or wrapped products rather than assets which are held directly, to avoid any legal uncertainty on this point.

Recital 7 of the Regulation already makes clear that “Assets that are held directly, such as **corporate shares** or **sovereign bonds**, are not PRIIPs, and should therefore be excluded from the scope of this Regulation.” **Government and local authority bonds** are also expressly excluded from scope (Article 1(2)(b) Prospectus Directive & Article 2(2)(d) of the PRIIPs Regulation).

The fact that the original drafting of the Regulation remains silent on other forms of directly held debt investments has significantly impacted the retail bond markets. In particular, due to the lack of guidance on how a callable make whole feature in an otherwise fixed rate corporate bond should be treated for the purposes of the PRIIPs definition. The ESA’s statement goes a long way to clarifying this position.

<ESA\_COMMENT\_PKID\_1>

**Q1 : Are there provisions in the PRIIPs Regulation or Delegated Regulation that hinder the use of digital solutions for the KID?**

<ESA\_QUESTION\_PKID\_1>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_1>

**Q2 : Do you agree that it would be helpful if KIDs were published in a form that would allow for the information to be readily extracted using an IT tool?**

<ESA\_QUESTION\_PKID\_2>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_2>

**Q3 : Do you think that the amendments proposed in the consultation paper should be implemented for existing PRIIPs as soon as possible before the end of 2021, or only at the beginning of 2022?**

<ESA\_QUESTION\_PKID\_3>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_3>

**Q4 : Do you think that a graduated approach should be considered, whereby some of the requirements would be applied in a first step, followed by a second step at the beginning of 2022?**

<ESA\_QUESTION\_PKID\_4>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_4>

**Q5 : Are there material issues that are not addressed in this consultation paper that you think should be part of this review of the PRIIPs Delegated Regulation? If so, please explain the issue and how it should be addressed.**

<ESA\_QUESTION\_PKID\_5>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_5>

**Q6 : Do you have comments on the modifications to the presentation of future performance scenarios being considered? Should other factors or changes be considered?**

<ESA\_QUESTION\_PKID\_6>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_6>

**Q7 : If intermediate scenarios are to be included, how should they be calculated for Category 3 PRIIPs (e.g. structured products)? If intermediate scenarios are not shown in the performance section, which performance assumption should be used for the 'What are the costs?' section?**

<ESA\_QUESTION\_PKID\_7>  
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<ESA\_QUESTION\_PKID\_7>

**Q8 : If a stress scenario is included in the presentation of future performance scenarios, should the methodology be modified? If so, how?**

<ESA\_QUESTION\_PKID\_8>

While we have no view as to whether the stress scenario methodology should be modified, we do not believe that the stress scenario should be removed because reducing the range of scenarios would make the KID less useful to (retail) clients, as a reduction in the number of scenarios could suggest that there is the potential for wider fluctuations in risk, which is the opposite of the desired effect. We therefore support continuing with the current range of scenarios rather than reducing it to two, which may require changes to documentation without any clear benefit to clients.

Performance scenarios for OTC derivatives (on the assumption that some instruments may be in scope of PRIIPs) should be presented using a payoff diagram rather than a table of scenarios, in order to address concerns that the current presentation of the performance scenarios doesn't explain clearly enough that the values presented are just some of a range of possible outcomes. A diagram has the benefit of the payoff scenarios bring indicated on the diagram, but the presentation of the performance scenarios as a diagram rather than a table will make it clear to the reader that there are a large range of possible outcomes of the product, and that the calculated scenarios are just a selection of those possible outcomes.

<ESA\_QUESTION\_PKID\_8>

**Q9 : Do you agree with how the reference rate is specified? If not, how should it be specified?**

<ESA\_QUESTION\_PKID\_9>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_9>

**Q10 : The revised methodology specifies that the risk premium is determined by future expected yields. The methodology further specifies that future expected yields should be determined by the composition of the PRIIP decomposed by asset class, country and sector or rating. Do you agree with this approach? If not, what approach would you favour?**

<ESA\_QUESTION\_PKID\_10>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_10>

**Q11 : The ESAs are aware that historical dividend rates can be averaged over different time spans or that expected dividend rates can be read from market data providers or obtained from analyst reports. How should the expected dividend rates be determined?**

<ESA\_QUESTION\_PKID\_11>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_11>

**Q12 : How should share buyback rates be estimated?**

<ESA\_QUESTION\_PKID\_12>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_12>

**Q13 : Do you agree with the approach for money-market funds? Are there other assets which may require a similar specific provisions?**

<ESA\_QUESTION\_PKID\_13>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_13>

**Q14 : The methodology proposes that the future variance be estimated from the 5-year history of daily returns. Should the volatility implied by option prices be used instead? If so, what estimate should be used if option prices are not available for a particular asset (equities namely)?**

<ESA\_QUESTION\_PKID\_14>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_14>

**Q15 : Do you think compensatory mechanisms for unforeseen methodological faults are needed? If yes, please explain why.**

<ESA\_QUESTION\_PKID\_15>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_15>

**Q16 : Do you favour any of the options above? If so, which ones? How would you ensure that the information in the KID remains comparable for all products?**

<ESA\_QUESTION\_PKID\_16>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_16>

**Q17 : Are there any other compensatory mechanisms that could address unforeseen methodological faults? If yes, please explain the mechanism; explain how it ensures that scenario information in the KID allows investors to compare PRIIPs, and explain how the information for similar products from different manufacturers remains sufficiently consistent.**

<ESA\_QUESTION\_PKID\_17>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_17>

**Q18 : What are your views on the use of a simplified approach such as the one detailed above, instead of the use of probabilistic methodologies with more granular asset specific requirements?**

<ESA\_QUESTION\_PKID\_18>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_18>

**Q19 : Do you consider the use of a single table of growth rates appropriate? If no, how should the methodology be amended?**

<ESA\_QUESTION\_PKID\_19>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_19>

**Q20 : More generally, do your views about the use of a probabilistic methodology vary depending on the type of product (e.g. structured products vs non-structured products, short-term vs long-term products)? For which type of products do you see more challenges to define a probabilistic methodology and to present the results to investors?**

<ESA\_QUESTION\_PKID\_20>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_20>

**Q21 : Do you think these alternative approaches should be further assessed? If yes, what evidence can you provide to support these approaches or aspects of them?**

<ESA\_QUESTION\_PKID\_21>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_21>

**Q22 : Are there any other approaches that should be considered? What evidence are you able to provide to support these other approaches?**

<ESA\_QUESTION\_PKID\_22>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_22>

**Q23 : Do you think illustrative scenarios should be included in the KID as well as probabilistic scenarios for structured products?**

<ESA\_QUESTION\_PKID\_23>  
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<ESA\_QUESTION\_PKID\_23>

**Q24 : If not, do you think illustrative scenarios should replace probabilistic scenarios for structured products?**

<ESA\_QUESTION\_PKID\_24>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_24>

**Q25 : Do you agree with this approach to define PRIIPs which would show illustrative performance scenarios using the existing definition of Category 3 PRIIPs? If not, why not? Where relevant, please explain why this approach would not be appropriate for certain types of Category 3 PRIIPs?**

<ESA\_QUESTION\_PKID\_25>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_25>

**Q26 : Would you be in favour of including information on past performance in the KID?**

<ESA\_QUESTION\_PKID\_26>



We welcome the fact that the ESA's proposal does not require the inclusion of past performance for Category 1 and Category 3 PRIIPs.

However, we would like to reiterate our position set out in our December 2018 response to questions 1 – 5 of the ESA's Consultation Paper concerning draft amendments to Commission Delegated Regulation 2017/653 of 8 March 2017, which is that past performance, if included in the KID, should only be applicable to category 2 PRIIPs, as those would allow past performance comparability between actively managed and passive fund structures/trackers but avoids the following products: OTC derivatives, structured products and other products with non-linear payoffs from showing potentially misleading figures.

In any event, while we agree that illustrating how a product may have performed in the past may be useful to show a retail investor how the payoff varies under different market conditions, there remains a risk that retail investors unduly rely on past performance as an indicator of future performance.

<ESA\_QUESTION\_PKID\_26>

**Q27 : Would your answer to the previous question be different if it were possible to amend Article 6(4) of the PRIIPs Regulation?**

<ESA\_QUESTION\_PKID\_27>  
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<ESA\_QUESTION\_PKID\_27>

**Q28 : Do you think that it can be more appropriate to show past performance in the form of an average (as shown in the ESA proposal for consumer testing) for certain types of PRIIPs? If so, for exactly which types of PRIIPs?**

<ESA\_QUESTION\_PKID\_28>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_28>

**Q29 : Do you have any comments on the statement that would supplement the display of past performance (e.g. with regard to the presentation of costs which are not included in the net asset value (NAV))?**

<ESA\_QUESTION\_PKID\_29>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_29>

**Q30 : Are you of the opinion that an additional narrative is required to explain the relationship between past performance and future performance scenarios?**

<ESA\_QUESTION\_PKID\_30>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_30>

**Q31 : Do you see merit in further specifying the cases where the UCITS/AIF should be considered as being managed in reference to a benchmark, taking into account the provisions of the ESMA Questions and Answers on the application of the UCITS Directive<sup>4</sup>?**

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<sup>4</sup> See "Section II – Key Investor Information Document (KIID) for UCITS" (in particular, Q&A 8) of the Q&A document available at: [https://www.esma.europa.eu/sites/default/files/library/esma34-43-392\\_qa\\_ucits\\_directive.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-43-392_qa_ucits_directive.pdf)

<ESA\_QUESTION\_PKID\_31>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_31>

**Q32 : Do you see the need to add additional provisions for linear unit-linked insurance-based investment products or linear internal funds?**

<ESA\_QUESTION\_PKID\_32>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_32>

**Q33 : Do you agree that a fixed intermediate time period / exit point should be used instead of the current half the recommended holding period to better facilitate comparability?**

<ESA\_QUESTION\_PKID\_33>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_33>

**Q34 : In this case (of a fixed intermediate time period), do you agree to show costs if the investor would exit after 5 years for all PRIIPs with a recommended holding period of at least 8 years? Or do you prefer a different approach such as:**

<ESA\_QUESTION\_PKID\_34>  
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<ESA\_QUESTION\_PKID\_34>

**Q35 : Do you think it would be relevant to either (i) use an annual average cost figure at the recommended holding period, or (ii) to present both an annual average cost figure and a total (accumulated) costs figure?**

<ESA\_QUESTION\_PKID\_35>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_35>

**Q36 : Do you think that it would be helpful, in particular for MiFID products, to also include the total costs as a percentage of the investment amount?**

<ESA\_QUESTION\_PKID\_36>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_36>

**Q37 : In this context, are there PRIIPs for which both performance fees and carried interests are applied?**

<ESA\_QUESTION\_PKID\_37>  
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<ESA\_QUESTION\_PKID\_37>

**Q38 : Do you agree with this analysis from the ESAs? If yes, what are your views on the extent to which fees related to the management of the underlying real estate assets, i.e. the properties themselves, should be taken into account in the calculation of the cost indicators?**

<ESA\_QUESTION\_PKID\_38>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_38>

**Q39 : Do you agree with the ESAs' preferred option 3 to revise the cost tables?**

<ESA\_QUESTION\_PKID\_39>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_39>

**Q40 : If not, which option do you prefer, and why?**

<ESA\_QUESTION\_PKID\_40>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_40>

**Q41 : In particular, do you think that the proposed changes to the presentation of the impact of costs on the return in percentage terms (i.e. including reduction in return before and after costs) is an improvement on the current presentation?**

<ESA\_QUESTION\_PKID\_41>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_41>

**Q42 : Do you have other comments on the proposed changes to the cost tables?**

<ESA\_QUESTION\_PKID\_42>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_42>

**Q43 : What are your views on the appropriate levels of these thresholds? Please provide a justification for your response.**

<ESA\_QUESTION\_PKID\_43>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_43>

**Q44 : If UCITS would fall in the scope of the PRIIPs Regulation, do you agree that the coexistence of the UCITS KII (provided to professional investors under the UCITS Directive) and the PRIIPs KID (provided to retail investors under the PRIIPs Regulation) would be a negative outcome in terms of overall clarity and understandability of the EU disclosure requirements? Are you of the view that the co-legislators should therefore reconsider the need for professional investors to receive a UCITS KII, as the coexistence of a PRIIPs KID together with a UCITS KII (even if not targeted to the same types of investors) would indeed be confusing, given the differences**

**in the way information on costs, risks and performance are presented in the documents? Alternatively, are you of the view that professional investors under the UCITS Directive should receive a PRIIPs KID (if UCITS would fall in the scope of the PRIIPs Regulation)?**

<ESA\_QUESTION\_PKID\_44>  
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<ESA\_QUESTION\_PKID\_44>

**Q45 : What are your views on the issue mentioned above for regular savings plans and the potential ways to address this issue?**

<ESA\_QUESTION\_PKID\_45>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_45>

**Q46 : Do you agree that these requirements from Article 4 should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIFs?**

<ESA\_QUESTION\_PKID\_46>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_46>

**Q47 : Do you agree that this requirement should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIF?**

<ESA\_QUESTION\_PKID\_47>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_47>

**Q48 : Do you agree that these requirements should be extended to all types of PRIIPs, or would you consider that they should be restricted to the Management Company of the UCITS or AIF?**

<ESA\_QUESTION\_PKID\_48>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_48>

**Q49 : Do you have any comments on the proposed approaches in relation to the analysis and proposals in this Section, and in particular on the extent to which some of the abovementioned requirements should be extended to other types of PRIIPs?**

<ESA\_QUESTION\_PKID\_49>  
TYPE YOUR TEXT HERE  
<ESA\_QUESTION\_PKID\_49>

**Q50 : Do you think this proposal would be an improvement on the current approach?**

<ESA\_QUESTION\_PKID\_50>  
TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_50>

**Q51 : Do you envisage significant practical challenges to apply this approach, for example for products which allow the investor to choose between a wide range or large number of options?**

<ESA\_QUESTION\_PKID\_51>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_51>

**Q52 : Do you see any risks or issues arising from this approach in relation to consumer understanding, for instance whether the consumer will understand that other combinations of investment options are also possible?**

<ESA\_QUESTION\_PKID\_52>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_52>

**Q53 : Do you think this proposal would be an improvement on the current approach?**

<ESA\_QUESTION\_PKID\_53>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_53>

**Q54 : Are there other approaches or revisions to the requirements for MOPs that should be considered?**

<ESA\_QUESTION\_PKID\_54>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_54>

**Q55 : Do you have any comments on the preliminary assessment of costs and benefits?**

<ESA\_QUESTION\_PKID\_55>

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<ESA\_QUESTION\_PKID\_55>

**Q56 : Are you able to provide information on the implementation costs of the proposed changes, in particular regarding, (1) the proposed revised methodology for performance scenarios (using a reference rate and asset specific risk premia), and (2) the overall changes to the KID template?**

<ESA\_QUESTION\_PKID\_56>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_56>

**Q57 : Are there significant benefits or costs you are aware of that have not been addressed?**

<ESA\_QUESTION\_PKID\_57>

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<ESA\_QUESTION\_PKID\_57>



JOINT COMMITTEE OF THE EUROPEAN  
SUPERVISORY AUTHORITIES