POSITION PAPER

ESBG COMMENTS ON THE EUROPEAN COMMISSION'S GREEN PAPER ON FINANCIAL SERVICES POLICY (2005 - 2010)

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EXECUTIVE SUMMARY

The ESBG welcomes the new focus of the European Commission on consolidation of existing legislation, effective transposition and continuous ex-post evaluation.

The Commission's suggestion to simplify or even repeal unnecessary measures which have not proven their worth for integration is clearly supported. In this respect, we provide concrete proposals in our response to chapter 4 of the Green Paper[1]. To achieve this objective, the Commission requires the full and unconditional support of Member States and the European Parliament. All EU institutions need to work in tandem to develop a leaner regulatory framework, thus contributing to the Lisbon agenda.

In this context, the ESBG welcomes the Commission's better regulation approach, which should not only be applied to new measures but also to revisions of existing directives, given that the new approach of the EC focuses on presenting few new measures while otherwise emphasizing the need for consistency, coherence and thereby for modification of already existing texts. The ESBG would also put an emphasis on real dialogue between policy makers and stakeholders and recommends that the Commission provides feed-back where it was unable to follow stakeholder recommendations to improve mutual understanding in a continuous and on-going exchange of views. Better regulation will however only prevail if all EC Directorate Generals and also all other EU institutions and bodies (comitology bodies) apply the relevant better regulation principles consistently.

Further, definition of the goals and depth of integration is no less important to make clear what is realisable in each sector of the financial services area. It is therefore important that everything the Commission undertakes in the name of further integration be done to fulfil not only a very real need, but that what results will improve on what exists.

In this context, the ESBG is questioning the reference to Europe's retail banking markets as being 'fragmented'- they rather reflect the widely differing profiles of European customers. It should also be acknowledged that wholesale and retail financial services markets are different. Accordingly, the retail banking market requires a different regulatory approach than the wholesale market, whereby the following should be assured:

- Transparency of the services on offer (i.e. via streamlined pre-contractual information requirements)[2],
- Continued market access,
- Financial stability and efficiency (by further enforcing the current supervisory architecture and cooperation between national supervisors, while elaborating solutions for issues such as lender of last resort, liquidity, etc),
- Cross-border as well as national competition and, last but not least,
- Pluralism in the market (different market structures rather than one uniform banking model).

It is therefore important that the Commission adopts a 'case by case' analysis approach to identify areas where legislative measures could clearly improve the integration of retail banking markets.

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[1] See Boxes 12, 13 and 14 on pages 49, 50 and 51 of this paper.
[2] For more details, see Box 12 on pages 49 and 50 of this paper.

On transparency:

The ESBG calls on the Commission to initiate an open debate at the EU level on the notion and perception of an 'average', mature consumer. The undisputed fact, that the information basis of even a sophisticated consumer could be inferior to that of his/her business counterpart, should equally be addressed in such a public debate with consumer and industry representatives and charged with identifying the true information needs of consumers at all stages of the purchase of financial services.

While the ESBG believes that any attempt in improving financial literacy and education in financial matters deserves the fullest support, it is critical as to whether this objective could be reached with '*more professional and independent advice'*. The ESBG believes it is more important to put the consumer in a position of making an informed choice than managing their own affairs.

On continued market access:

While many of the discussed barriers to cross-border consolidation are non-removable or natural barriers (e.g. culture, mentality, language, etc.), there are removable barriers (e.g. tax barriers, multiple reporting requirements, etc) that require attention. In the meantime, cross-border business can and will happen as long as access to national and local markets is assured. Recent cross-border (M&A) activities[3] seem to imply that this is the case.

On financial stability and efficiency:

The ESBG is strongly in favour of increasing the convergence of supervisory practices across the EU, as it will make the prudential supervision of EU banks more efficient and effective. From the ESBG's point of view, the evolutionary approach for supervision is the appropriate policy approach as the Commission rightly gives preference to further improving supervisory cooperation and quality of supervision as well as appropriately safeguarding financial stability, rather than rushing into creating new structures ('evolution rather than revolution'). The Commission's approach thus makes the best of the current supervisory architecture and is a logical follow-up to the (proposed) CRD provisions (consolidated supervision, supervisory disclosure and increased supervisory cooperation).

On cross-border competition and the positive effects of pluralism:

Further, identification of drivers for competition should be top on the EC's policy agenda. In such a debate, it is important to note the positive role that the current diversity of banking structures play in terms of assuring a competitive market. The ESBG considers this pluralist banking market, i.e. a market shaped by a diversity of financial services providers, as an important characteristic, the maintenance of which will continue to assure competition and act as a driver for integration. The diversity of market players furthermore contributes to the positive development of the retail banking market (in terms of market coverage, product development and innovation), thus ultimately benefiting the consumers.

[3] E.g. Banco Santander- Abbey National; Swedbank – Hansabank; Unicredito – Hypo-Vereinsbank.

The international dimension:

The ESBG welcomes the financial market dialogue between the US and the EU and would not only recommend intensifying this dialogue, but also starting similar initiatives with China, Japan and India.

It is important that the EU speaks with a united voice in the international arena when negotiating international standards. The Commission should facilitate cooperation for negotiations within those bodies, where Member States are represented individually. In the negotiation as well as in the transposition phase of international standards in the EU regulatory framework, it is imperative, that the needs of all economic actors, big or small, are taken into account.

1. Key Political Orientation

In response to the European Commission's questions to stakeholders on section 1 - Key political orientation - of its financial services policy for the period 2005-2010, namely:
- [Do you] agree with the overall objectives for the Commission's policy over the next five years?
- [Do you] agree with the key political orientation described above?

The ESBG welcomes the new focus of the European Commission on consolidation of existing legislation, effective transposition and continuous ex-post evaluation

The European Commission (EC) can be commended for its work to put in place the Financial Services Action Plan (FSAP). It has delivered in terms of efficiently developing the necessary legislative process to put the plan into action, and it has kept broadly in line with the envisaged time-table.

The ESBG welcomes the increased and clearly improved cooperation of national authorities as well as the improved consultation of the industry within the Lamfalussy structure.

Moreover, the ESBG agrees with the Commission and welcomes its decision to start a new phase with a focus on:

- consolidating the existing regulatory regime;
- ensuring effective transposition; as well as
- continuous ex-post evaluation.

What needs to be done now is in a way more challenging than presenting a new package of legislative actions: it will require attention to detail and at times difficult negotiations with Member States and the European Parliament. In short, it is politically not as attractive as presenting a new action plan. Therefore the ESBG pays its respect to Commissioner McCreevy and DG Markt for choosing a difficult and politically less "appealing" avenue.

Enforcement and monitoring of FSAP regulation still key

As mentioned above, the ESBG agrees with the EC's overall policy objectives. The current focus should therefore be on assessing whether the existing provisions of the Plan are being appropriately implemented and enforced. As stated by the Commission, the bulk of the FSAP legislation is going to be implemented between 2005-2007/8, including the implementation of both BASEL II and IFRS. This is one decisive reason why the industry has been united in communicating its regulatory fatigue and the ESBG is welcoming the Commissioner's acknowledgment of this fact.

*Too early to draw **final** conclusions from FSAP – continuous ex-post evaluation required*

Against the background of the above, it is therefore still too early to draw final conclusions on the effectiveness of the Financial Services Action Plan especially with regard to the intended aim of increased integration, or to say with any certainty whether it represents an improved legislative framework for the financial services industry. Effective ex-post evaluation will therefore need to be carried out in due course, and as soon as an accurate assessment of the extent to which integration has progressed as a consequence of the Financial Services Action Plan can be measured. The ESBG is looking forward to contributing its share to the evaluation of the FSAP.

Consolidation of the existing regulatory framework

ESBG believes that as a priority consolidation of the existing regulatory framework is necessary. In this context, less and simpler regulation (deregulation) should be one main target of the Commission in this next phase following the FSAP. The industry very much welcomes the Commission's suggestion to repeal unnecessary measures which have not proven their worth for integration. To achieve this objective, the Commission requires the full and unconditional support of Member States and the European Parliament. All EU institutions need to work in tandem and should not shrink back from modifying existing proposals or repealing measures which did not deliver the intended benefits.

Integration as a means to an end, and that end is increased competition

Given the recent result in referendums on the constitution, a debate steered by the European institutions, together with the governments of the Member States, is required to explain what visions of Europe they have in mind when seeking to achieve integration and convergence. It is unclear how the Commission defines an integrated market. While the watchwords mentioned in the Green Paper and the potential economic benefits summarized in Annex 1 provide an indication, questions remain.

As was highlighted in the ESBG response to the integration reports of the four independent groups of experts, integration is only a means to an end, and that end is increased competition. This further needs to be defined. If what we have in mind is simply to achieve better profitability, at all cost, then increased competition is unlikely to bring long term benefits, either to the industry or to its customers.

Definition of the goals and depth of integration is no less important to make clear what is realisable in each sector of the financial services area. It is therefore important that everything the Commission undertakes in the name of further integration be done to fulfil not only a very real need, but that what results will improve on what exists. For instance, the parameters will not and cannot be the same in both retail and wholesale banking markets, for the reasons outlined in the Box 1 below.

BOX 1: A vision of Europe's retail banking markets

Since the introduction of the Euro in January 1999, integration in wholesale banking markets has, according to a number of EC indicators of integration, progressed considerably. In contrast, in the retail financial services sector, the same indicators seem to illustrate that integration is less developed.

This can be explained to a certain extent by considering the relevant market for retail financial services, in contrast to that for wholesale financial services.

While wholesale banking markets tend to be focused on institutional or larger corporate clients, retail banking markets predominantly deal with individuals and smaller or medium sized corporations. In addition, wholesale markets are European or even international in dimension and nature whereas retail markets tend to be local or regional. This does not necessarily mean that retail banking markets do not have a cross-border dimension: a region can exist either entirely within a country or, in the case of a border region, across two or more countries. But of importance in this context are the characteristics that are shared across a local market, such as language, mentality, culture or traditions.

It is precisely these facets which are essential in successful retail banking:

- Retail banking is and will remain - to the benefit of the customer - a highly competitive business with relatively low margins in European domestic markets. The incentive to expand into such business across borders is therefore limited for banks.
- Retail clients value advice, relationship and trust as highly as price. Foreign institutions therefore typically have more problems tapping into the local retail markets due to the importance of this local knowledge.
- The incentive for consumers to operate across borders is also largely absent. Although it seems rational for consumers to search throughout Europe to find a "good deal", the reality of search and menu costs usually offset the benefits obtained.

Against this background, the ESBG has concluded that the current market share of foreign institutions in Europe's domestic retail banking markets is at least as much the result of the factors mentioned above (consumer satisfaction with their current – domestic/regional/local – financial service providers, high levels of competition implying low margins, "natural" advantage i.e.: proximity of the local service provider) as any other barrier to cross border activity.

In such a context, the current diversity in the characteristics of local retail banking markets in Europe should however not be perceived negatively in the quest to achieve deeper integration, if the aim of integration is the achievement of greater competition in Europe's retail banking markets. Instead, identification of drivers for competition should be top on the EC's policy agenda. In such a debate, it is important to note the positive role that the current diversity of banking structures play in terms of assuring a competitive market. The ESBG considers this pluralist banking market, i.e. a market shaped by a diversity of financial services providers, as an important characteristic, the maintenance of which will continue to assure competition and act as a driver for integration. The diversity of market players furthermore contributes to the positive development of the retail banking market (in terms of market coverage, product development and innovation), thus ultimately benefiting the consumers.

Questioning the reference to Europe's retail banking markets as being 'fragmented'- they rather reflect the widely differing profiles of European customers

Looking at and describing European retail banking markets today necessarily requires the profiles, needs and expectations of European banking consumers to be closely examined. One quickly finds however that there is no standard profile of the European banking consumer; but perhaps more poignant is the fact that there is no standard profile of the European banking consumer that will eventually become reality if only all impediments to integration were removed. If this were so, products and services could simply be standardised across regional and national boundaries.

Such a 'one size fits all' approach does not work as the profile of banking consumers in Europe varies not only across social strata but also from country to country. In many respects, consumer habits are the result of cultural habits, and products and services need to be tailored to suit these local characteristics. As an example of the widely differing profile of banking customers in Europe consider the following contrast in choice of payment methods: the preferred choice of payment is cash for 60.2% of Italians, 51.8% of Germans, and 15.8% of the French; cheque for 47.2% of the French, 10.4% of Italians and 4.4% of Germans; payment card for 34.1% of the French, 30.4% of Germans and 26.1% of Italians[4].

BOX 2: The role of the branch – underestimated?

Looking at consumer attitudes there seems however also to be a common trait as 'proximity' to their bank seems to be of key importance for retail customers in Europe. According to a recent study by Booz Allen[5], 79% of bank customers in the six European countries analysed prefer to open a bank account within a branch and 78% prefer to conclude a mortgage contract within a branch to other distributions channels.

Competition better served by diversity than by across the board standardization

The notion of the European consumer as diverse in banking needs as in cultural traits, is however not incompatible with the ideals of competition, it should rather be seen as an incentive for competition, challenging the different actors in the market to approach their diverse clientele with a large choice of different products. Indeed, a competitive market should respond to all consumer expectations, and can therefore be fostered while respecting and recognising the demands and needs of local or regional oriented customers, as well as the expectations of a small but growing number of consumers who are interested in and in need of cross-border services.

Recognising the above is important for it explains why the existence of idiosyncratic barriers such as the specificities of local and regional demand and needs, as well as culture and language, naturally limit the extent of integration.

[4] "The Caisse d'épargne and household financial exclusion: which actions and which prospects?", 2004, G. Gloukoviezoff.
[5] "The Unfulfilled Role of Bank Branches in Europe", by Booz Allen, 26 January 2005.

Cross-border consolidation as "the" means to further integration?

It is often suggested by some market actors that cross-border consolidation is "the" means to further market integration. The ESBG would wish to express its scepticism in this respect:

While the ESBG is in favour of removing unjustified barriers to integration such as multiple reporting requirements, it should be recognised that intrinsic "barriers" naturally limit the potential for rationalisation, one of the key drivers of consolidation.

BOX 3: Looking to the US reveals that retail banking markets there are similarly local in nature

Furthermore, the US is often mentioned as an example for Europe to follow in its path to integration. Yet a closer look at the US retail banking markets reveals similar if not more pronounced evidence of the 'deep fragmentation' of retail banking markets which it speaks of (in spite of the passage of the Riegle Neal Act to encourage extra state M&A activity). By 2002, multi-state branches in the US numbered 493, representing only 5% of total US banks. In fact, no US institution has major retail operations in all regions of the US[6].

While certain arguments for consolidation are legitimate, one that has no basis is that which is based on a perception that only certain ownership structures will guarantee the highest levels of efficiency in European banking markets, and therefore that these should be championed above all other types of banking ownership structures. Specifically, the joint-stock model, proper to the majority of commercial banks, has been hailed by some as the primary model to follow.

In contrast and as highlighted above, the model of integration which ESBG has in mind is one where players with different legal structures offering a wide variety of products are able to evolve freely, regulated under the principle of 'same business, same risks, same rules'. This means that ESBG does not support one legal structure over another. While different legal structures highlight differences in business models (i.e.: distributing profits to shareholders or to society at large), it does not suggest that one model is necessarily superior to the other. It makes little sense to make comparisons between banks with different legal forms for the simple reason that they do not have exactly the same goals and strategies, they are also capitalised differently. Different types of institutions can however coexist in the same markets with very different business models and product and service offerings thereby enriching the market, ultimately benefiting the customer who can choose not only between different products, but also between operators[7].

[6] "US vs EU banking market: the more integrated, the more profitable?", November 2003, Deutsche Bank Research, N. Walter (ed).

[7] For more information on the ESBG's view on banking consolidation, see also "European banking consolidation: a considered analysis of the retail banking market and the position of the European Savings Banks Group", ESBG, December 2004.

Retail requires a different regulatory approach than wholesale

One should be mindful of the differences between wholesale and retail financial services markets. Accordingly, retail banking markets require different policy responses than wholesale markets. Indeed, the fact that retail banking is organised along local and national lines, if it explains the fragmentation that the Commission speaks of, is not a negative thing that needs to be gotten rid of. Rather, it is intrinsic to retail banking business, in Europe and also elsewhere.

What needs to be assured instead is:

- Transparency of the services on offer (i.e. via streamlined pre-contractual information requirements, for more details see section 4, examples of targeted harmonisation areas in this paper),
- Continued market access,
- Financial stability and efficiency (by further enforcing the current supervisory architecture and cooperation between national supervisors, while elaborating solutions for issues such as lender of last resort, liquidity, etc),
- Cross-border as well as national competition,
- Pluralism in the market (different market structures rather than one uniform banking model).

It is therefore important that the Commission adopts a 'case by case' analysis approach in areas where legislative measures could clearly improve the integration of retail banking markets. In this context, the ESBG welcomes the Commission's idea to establish forum groups for specific retail products and sees the pending revision of the Consumer Credit Directive as well as the planned adoption of the Payment Services Directive as "test-cases" where better regulation principles should be applied.

The ESBG is in favour of better regulation principles

The ESBG welcomes the Commission's better regulation approach, which should not only be applied to new measures but also to revisions of existing directives. This is all the more important, given that the new approach of the EC focuses on presenting few new measures while otherwise emphasizing the need for consistency, coherence and thereby for modification of already existing texts. In this context the ESBG would also put an emphasis on real dialogue between policy makers and stakeholders and recommends that the Commission provides feed-back where it was unable to follow stakeholder recommendations to improve mutual understanding in a continuous and on-going exchange of views. Better regulation will however only prevail if all EC Directorate Generals and also all other EU institutions and bodies (comitology bodies) apply the relevant better regulation principles consistently[8].

In this context the ESBG explicitly welcomes the EC's emphasis on respecting the principles of both subsidiarity and proportionality and the overall aim of enhancing competition when presenting new/revised legislation.

[8] More is said on the importance of better regulation in response to questions contained in section 2 of the Green Paper.

Risk Capital

The ESBG agrees that an efficient risk capital market together with a well-functioning banking structure can deliver substantial benefits to the economy. Evidence suggests that the risk capital market in the EU is still small in comparison with the US. Venture capital should be seen as a complement to bank loans, appropriate especially for innovative SMEs with strong growth potential. It should however be borne in mind that, for a vast majority of small enterprises, bank loans will remain the main source of funding, since it gives them full flexibility and control over their businesses.

The ESBG strongly supports supervisory convergence measures

The ESBG is strongly in favour of increasing the convergence of supervisory practices across the EU, as it will make the prudential supervision of EU banks more efficient and effective. From the ESBG's point of view, the evolutionary approach for supervision is the appropriate policy approach as the Commission rightly gives preference to further improving supervisory cooperation and quality of supervision as well as appropriately safeguarding financial stability, rather than rushing into creating new structures ('evolution rather than revolution'). The Commission's approach thus makes the best of the current supervisory architecture and is a logical follow-up to the (proposed) CRD provisions (consolidated supervision, supervisory disclosure and increased supervisory cooperation). The ESBG stands ready to contribute to the on-going work in this area.

Lamfalussy process: inter-institutional agreement required

In the context of the Lamfalussy procedure (level 2), all European institutions should take the necessary precautions and should seek to prolong or re-negotiate the current inter-institutional agreement to assure equal footing between all parties involved, including the European Parliament.

Other complimentary horizontal policy areas

On the subject of corporate governance, standard setting and statutory auditing, the ESBG agrees with the Commission that these horizontal and complementary policy areas are of immense importance in building confidence and transparency in European financial markets. The right balance however needs to be achieved between increasing transparency for the market and avoiding too burdensome disclosure requirements for market participants.

International standard setting bodies should be subject to good corporate governance principles (also in terms of representativity and their funding) and should be fully accountable to their constituents. The ESBG therefore supports the Commission's efforts to facilitate co-operation amongst the European "stakeholders" thereby contributing to developing a European voice and position vis-à-vis with these standard setting bodes in the interest of all market participants.

As far as statutory audit and coordination of public oversight systems are concerned, the current proposal for a directive on statutory audit foresees the introduction of an effective system of public oversight authorities at Member State level.While the ESBG acknowledges the necessity for establishing such a regime due to the reciprocity debate between IASB and FASB, there is a risk, that the establishment of such bodies would

ultimately result in another layer of implementation guidelines, thereby increasing the regulatory burden for the industry. We would therefore appeal to the Commission to assure efficient cooperation by way of facilitating information exchange between these oversight bodies.

The corporate governance framework in place at Member States' level differs in terms of approach i.e. codes or laws, and content, depending on and in line with the legal traditions in each country. Against this background, the ESBG believes that a European Corporate Governance code would add another layer of regulation without necessarily contributing to the overall quality of corporate governance measures. We therefore welcome the Commissions decision to refrain from developing an EU corporate governance code.

Lastly, the ESBG is very supportive of the idea to strengthen financial relations between Europe and other economies such as the US, Japan, China, and India. As globalisation of parts of the financial markets has increased, decision-making at the international level via the relevant international standard setting bodies has grown in importance. Nurturing a better mutual understanding between the world's financial centres by encouraging stronger relationships will contribute to more effective international standard setting.

2. BETTER REGULATION, TRANSPOSITION, ENFORCEMENT AND CONTINUOUS EVALUATION

In response to the European Commission's questions to stakeholders on section 2 'Better regulation, transposition, enforcement and continuous evaluation' of its financial services policy for the period 2005-2010, namely:

– [Do you agree] with the priority measures identified?
– Which additional measures should be taken to foster consistent application and enforcement of European legislation?

The ESBG welcomes the Commission's strong commitment to better regulation principles. We have already communicated our ideals on better regulation via a number of documents, most recently in our response to the expert group reports on integration last year, and the year before that in our paper on the future of retail banking[9].

There are quite a few elements of the Commission's priority measures in this chapter which are very much included in the ESBG vision, which we take the opportunity to reiterate in this section in more detail, and which develops on what was said in the previous section.

The ESBG proposal for better regulation

In designing regulation for the European retail banking market, it is the belief of the ESBG that it is important to keep the following steps in mind:

➢ *Consistent application and enforcement of existing rules*

We explicitly welcome the EC's announcement that it intends to monitor the consistent application and enforcement of the existing rules to assure a level playing field and avoid legal uncertainties and ambiguities. To this end, an intensive and regular exchange of views with Member States representatives should be organised, so that open questions can be dealt efficiently, e.g. via interpretative EC guidelines.

In this context it is of importance to clearly define what is meant by 'gold-plating' as the reference to the term in the Green Paper is unclear. The Green Paper defines 'gold-plating' as "*adding layer upon layer of regulatory additions that go beyond the Directives themselves*"[10] and thereby implies that 'add-ons' in general should be avoided at Member States level.

The ESBG believes that the issue is more complex than that:

First, there are cases where EU texts are open to interpretation, ambiguous or unclear. One potential reason for 'add-ons' by Member States might therefore simply be the wish to provide legal security for the industry and consumers alike.

[9] See "ESBG response to European financial integration reports of the four independent groups of experts", ESBG, September 2004, and "The future of European retail banking markets", ESBG Research, June 2003.
[10] Green paper, chapter 1, Key Political Orientation, page 6.

Second, The ESBG believes that ‘gold-plating’ is dependent on the harmonization approach in place, and is not relevant to all approaches:

If harmonization is based on the internal market clause and accordingly lays down maximum/full requirements at the EU level, then the ESBG is in favour of preventing regulatory overkill by way of ‘gold-plating’.

If harmonization is however based on a minimal clause (as is the case with most consumer protection directives), Member States are permitted to react to their national legal environment on an individual basis by either keeping already existing provisions or deciding to ‘add-on’ to the EU rules. In these cases, it should be recognized that the achievement of harmonization might at times require individual action on the part of national governments in line with the harmonization approach chosen at the EU level, as markets across Member States are not the same.

In the ESBG’s view, these legislative “add-ons” should in any case pass the test of proportionality. In any event, the ESBG would propose that Member States should notify the EC about such measures to avoid regulatory overkill and prepare the basis for convergence over time.

➢ *Immediate ex-ante evaluation comprising of an ‘integration and economic benefits test’*

While a final appreciation of the impact of the FSAP on integration is not yet possible, in-depth ex-ante evaluation work is vital already at the present stage to determine any future initiatives at the EU level and will need to be carried out continuously on all new (and revised) legal initiatives, in line with the Commission’s policy of better regulation[11] in the period from 2005-2010.

Ex-ante evaluation should be based on an overall assessment of the current ‘acquis communautaire’ in the financial services area. Should the Commission envisage proposing EU initiatives in the retail area, such an assessment is an important first step so as to determine whether the intended integration and/or economic goals are likely to be achieved.

Against this background, the ESBG regrets that the Commission’s yearly FIM publication (Financial Integration Monitor) has not been made available at the time of publication of the Green Paper, especially as the contents of the 2005 edition would have been very valuable for our current debate and could not be taken account of given its publication towards the end of the Green Paper’s consultation period.

➢ *Continuous ex-post evaluation to test whether expected economic benefits have been achieved*

The ESBG commends the Commission on listing ex-post evaluation of the FSAP and of all new legislative measures as a ‘top priority’ and welcomes the Commission’s intention not only to assure consistent transposition and enforcement but equally to address “*the more fundamental question as to whether the rules actually achieve what they were meant*

[11] EC working documents “Impact assessments: next steps“, March 2005.

to achieve"[12]. The ESBG is appealing to the co-legislators, the European Parliament and the Council, to support the Commission in its endeavours to fine-tune and develop the existing 'acquis communautaire' in a framework that furthers integration and stimulates economic development. Of vital importance in such an exercise is the political will of all regulators not to shrink back from modifying or even repealing measures which do not pass the 'integration' test by not leading to the intended economic benefits.

We believe that the planned evaluation of the FSAP in the course of 2006-2008 is a timely exercise to analyse the state of transposition, though we believe that it may be too early to draw the first economic conclusions at that stage. The ESBG stands ready to nominate economic experts from amongst its membership to the workshop envisaged by the EC in mid 2006. The announced reviews of FSAP measures is equally welcome as a monitoring exercise, the results of which should then be used to clarify current interpretation issues and open questions (e.g. annex 1 of Financial Conglomerates Directive).

➢ *List of planned revisions*

In this context, the ESBG looks forward to the planned reviews of the financial conglomerates directive, the large exposures directive and the own funds directive. Adaptations in these three areas will be needed to take account of all the changes introduced further to the adoption of the Capital Requirements Directive. The ESBG also welcomes the Commission's intention to assess the appropriateness of introducing capital requirements for regulated markets.

As far as the planned revision of the E-money Directive is concerned, the ESBG would like to stress the importance of assuring a level playing field between E-money institutions and banks. Any revision of the E-money Directive would therefore need to make sure that competitive disadvantage for banks is excluded and that an equivalent[13] supervisory regime for e-money institutions remains in place.

Finally, expanding the mandate of the Inter-Institutional Monitoring Group (IIMG) is an appropriate step to bring the scope of the IIMG in line with the overall remit of the Lamfalussy process. The ESBG has contributed regularly to the work of the IIMG[14] and is looking forward to the new round of consultations.

➢ *Evaluation check-list*

From the point of view of the ESBG any approach to evaluation (ex-ante or ex-post) could benefit from taking the following approach, as suggested by a working group of the City of London[15]:

[12] Green Paper, Annex section II, chapter on ex-post evaluation, page 8.
[13] Equivalence needs to be established with a view to the business remit of e-money institutions.
[14] "Response to the first interim report monitoring the new process for regulating securities markets in Europe (the Lamfalussy process)", ESBG DOC 652/03, May 2003; and
"Response to the second interim report monitoring the Lamfalussy process", ESBG DOC 155/04, July 2004.
[15] "Creating a Single European Market for Financial Services – a Discussion Paper", Report by a working group in the City of London.

Is the proposed legislation:

- Proportionate to the problem that it claims to address?
- Cost-effective (subject to an intensive and well founded cost-benefit and business impact analysis - as proposed by the Commission in its package on better regulation)?
- Addressing a clear market failure and having a significant probability of producing benefits that demonstrably exceed the cost?
- Sufficiently clear in terms so as not to create ambiguities of interpretation?

➢ *A more pro-active role for the Commission*

In order to achieve these tasks, the ESBG believes that in its role as 'Guardian of the Treaty', the EC should

- Continue to provide regularly up-dated internal market scoreboards, including sections highlighting transposition deficits. In this context, the ESBG welcomes the EC's intention to publish an on-line FSAP transposition matrix. Making such information public will increase peer-pressure and will provide an appropriate tool to stimulate timely transposition;
- Request a renewed political commitment from Member States by way of inviting them to provide clear and detailed transposition tables;
- Propose realistic deadlines for transposition;
- Organise transposition workshops. The ESBG would recommend informing and including stakeholders in this process. Again, transparency is key and as the Commission rightly states, market participants might not only be aware of shortcomings in the implementation process, but also are dependent on receiving information (e.g. on the interpretation of an ambiguous EU provision) in a timely manner given the relatively short transposition periods;
- Launch infringement procedures in a timely manner.

The Commission's role as a 'Guardian of the Treaty' means that the EC is very much responsible for these tasks, and should not delegate these powers. In order for the Commission to properly undertake such an exercise, it should be provided with all the necessary resources and, most importantly, it should be provided with the relevant information on a timely basis.

➢ *Mediation: SOLVIT, FIN-NET, CESR (Lamfalussy)*

As far as mediation and alternative dispute resolution systems such as FIN-NET and SOLVIT are concerned, the ESBG believes that the current systems are appropriate but should be better promoted both at EU and at the national level, particularly in the new Member States where for example FIN-NET has not yet identified national schemes to join the EU network.

The attraction of FIN-NET is that it provides a network within which various existing and accepted out-of-court redress schemes can communicate. Any revision of FIN-NET should build on the existing structures rather than on establishing a uniform and

standardised model of EU alternative dispute resolution systems, which would require the costly establishment of new structures.

Furthermore, as regards the mediation mechanism among supervisors, the ESBG would like to express its support towards the establishment of a mediation mechanism among CESR members. Such a mechanism should prove beneficial as it offers an effective solution to the disputes between national securities authorities from different Member States. In the long run, this should lead to a better application of the EU legislation and to further integration of the financial markets. The ESBG is therefore supportive of the recent initiative taken by CESR in this respect[16].

The crucial point which should be observed at all times is that the mediation mechanism must pay full respect to the competence of the European Commission at Level 4 and it should not interfere with the respective roles of the Commission and the European Court of Justice in the interpretation and enforcement of EU law. It is essential to keep in mind that the decisions reached through the mediation mechanism are legally non-binding, as they would otherwise be capable of undermining the competence of Member States, whose national sovereignty and competence must be respected. Therefore, a superior supervising authority (e.g. a ministry of finance) must be assigned with the right to overrule the decision made through the mediation mechanism.

The mediation mechanism should not be limited to operational disputes regarding the mutual recognition of decisions and it should encompass other categories of disputes as well (for example those arising from the provisions of the MiFID, Transparency Directive, MAD, Prospectus Directive or Takeover Bids Directive).

Finally, the ESBG would like to encourage similar mechanisms within the other two Lamfalussy committees (CEBS and CEIOPS) which could be built on the experience gathered by CESR in this area.

- *Simplifying and consolidating all relevant financial services rules*

The ESBG agrees with the Commission's statement that "*the Community framework of law for the European financial markets and services is now highly developed*"[17]. The Commission then proposes simplification and consolidation of the existing rules via codification, mentioning two concrete initiatives: The CFR initiative[18] (the Common Frame of Reference in reviewing the contract law acquis) and a Financial Services Rulebook.

Regarding the CFR initiative, the ESBG is concerned that there was no ex-ante exchange of views on the usefulness of such an exercise, and that the objectives aimed for are unclear. This initiative is meant to develop common principles of European contract law in order to improve the quality and consistency of the present and future acquis. While the ESBG, who is represented in the market participants group, the so-called CFR-Net, is supportive of this idea, it is worried about the development of the debate within the project.

[16] "Establishment of the mediation mechanism: a response to CESR's call for evidence", ESBG DOC 520/05, May 2005.
[17] See Green Paper, Annex section II, page 5.
[18] COM (2004) 651 final, containing explanations on the CFR initiative.

Experience to date clearly shows that the work undertaken goes far beyond the identification and elimination of inconsistencies in the existing EU law and the definition of common fundamental principles. Instead, the broad scope and high level of detail point towards the will to establish a European civil law book. Thus, rather than leading to convergence and simplification the exercise seems to be leading towards the development of a fully-fledged European contract law exercise. If a European civil law book was the final objective, the legal basis for such an exercise would need to be examined, and the necessity for it would need to be questioned (subsidiarity principle). In addition, the better regulation principles should be applied at the latest when the results of the common frame of reference on contract law are available and before any further legislative initiative at the EU level is launched.

With reference to the proposed Financial Services Rule Book, the Commission proposes to launch a feasibility study in the securities area to find out if "*over time all rules (at European and national level) can be used in one body of consistent law, a 'Financial Services Rulebook*'[19]. The ESBG asks for further clarification, in particular on what such a book should be comprised of and what its scope should be, especially with regard to national provisions. The ESBG would suggest submitting the planned activities to a proportionality and subsidiarity test and bringing it in line with the review process, which is foreseen in the various directives. Otherwise, the ESBG is concerned that despite all good intentions such an enormous codification exercise might risk leading to more complexity.

In any event, codification exercises – such as law-making in general - should be tested against the following principles:

- Examine whether self- or co-regulation could be considered as a potential alternative to binding regulation.
- Does European legislation fit credit institutions of all sizes and structures, whether large, small, local or pan-European?
- Does European legislation meet the criteria of same business, same risks, same rules?
- Do European legislators prioritise legislative proposals to achieve high quality and consistent European legislation thereby following the notion of "less is better"?
- Does European legislation apply a more nuanced approach with focused and tailor-made harmonisation? ESBG believes that filling legislation with detailed provisions leading to across the board standardisation is unnecessary and at times even harmful.

In conclusion, the ESBG believes that the Commission requires strong support and commitment of the other European Institutions as well as the advisory bodies to work towards the objective of creating a leaner, more consistent and coherent regulatory framework, and therefore appeals to these bodies to lend their full support to the Commission to achieve this clearly welcome objective.

[19] See Green Paper, Annex section II, page 6.

➢ *In-depth consultation via a regular exchange of views on new/revised EU policy measures between the relevant EU bodies and all stakeholders*

As was highlighted already in this paper, the ESBG believes that better regulation principles should be consistently applied to new measures but also to revisions of existing texts, given that the focus in the next five years will be on consolidating the current framework rather than extending it.

The ESBG welcomes the suggestion that open and transparent policy making with extensive use of consultation mechanisms at all levels figures at the top of the Commission's list of priorities in the better regulation area. It commends the EC on the better regulation efforts already undertaken and recognises that a transitional period to "phase-in" to better regulation, which the EC started in 2003, is required to adapt to the new procedures. It believes however that this transitional period should now come to a close and that better regulation should become the rule. It further believes that better regulation principles should be applied by all Directorate Generals of the Commission and, equally importantly, also by other EU institutions, such as the Council and the European Parliament, which have so far not undertaken the necessary preparations to assure better regulation throughout the EU legislative process.

The ESBG notes the trend of the EU legislator to establish comitology committees such as the AML Regulatory Committee (which will be established following the adoption of the 3rd AML Directive), the Audit Regulatory Committee and the Payments Committee, both the establishment of which is proposed in the respective Directives. The ESBG believes however that traditional comitology/advisory bodies should work in a more transparent and accountable manner as was the case to date; such bodies would also be subject to better regulation principles. Therefore, adequately designed due consultation processes should be assured. In this light, the establishment of market practitioner panels might be worthy of consideration.

The ESBG would further recommend that a real dialogue between policy makers and stakeholders be established and would welcome explanation and feed-back from the Commission in the instances whereby it was unable to follow stakeholder recommendations. This practice would improve mutual understanding via a continuous and on-going exchange of views.

BOX 4: The CCD - an example of lack of consultation

One regretful example of insufficient consultation was in the context of the revision of the Consumer Credit Directive. In that area, ESBG believes that better regulation principles were absent from the regulatory process. Consultation of market participants – the industry as well as consumer organisations – was assured neither before the original revision was presented nor before the first modification guidelines were published. EBIC (the European Banking Industry Committee), which is a common platform of all European banking associations, has expressed its disappointment with this situation and is looking forward to constructively working with the relevant Commission services to remedy this situation in the future.

➢ *Impact assessment*

The ESBG fully supports the Commission in attempts to provide quantitative impact assessments based on a thorough market analysis as part of any better regulation initiative. In this context, a thorough analysis of the impact of the current legislative framework on *both* financial institutions and consumers is indispensable. Impact assessments should furthermore highlight the merits of future proposals for further integration and should ideally also include cost-benefit analysis, which should be executed by the Commission. In this context, we welcome the EC's assurance that "*sound rules will be drawn up with clear and demonstrable added-value*"[20].

The ESBG welcomes the publication of the Commission's better regulation initiatives on the website of the EC's Secretariat General, which provides a valuable tool and is contributing to improved transparency and a better understanding of the efforts undertaken.

BOX 5: Impact assessment scoreboard since 2003

In 2003, 21 out of 275[21] legislative proposals have been subject to impact assessment.
In 2004, 30 out of 114[22] legislative proposals have been subject to impact assessment.
In 2005, so far 22 out of 316[23] legislative proposals have been subject to impact assessment.
The above demonstrates that relatively few legislative proposals have been subject to impact assessments during the phase-in period.

Independent reviews of the EC's impact assessments furthermore reveal that there is room for improvement, despite some positive developments. The European Policy Forum, for example, has produced a "scoreboard" based on the first 20 Regulatory Impact Assessments (ex.IAs) carried out by the Commission[24].

On the 'negative' side, it concluded that here is no information available to assess whether the proposals chosen were the most significant in the EU work programme; quantification does not seem to have been pursued as far as it might have been in some cases; only one half of the ex.IAs where risk is a factor, include a comparison of one set of risks against another. The poor quality of market analysis appears to be a general problem.

On the 'positive' side, it was noted that the Commission, in general, has made an excellent start in introducing Regulatory Impact Assessments on a systematic basis, with major benefits for transparency and lesson learning. The rationale for the selection of the ex.IAs was generally clear and each of the proposals chosen was of economic significance. Internal Commission procedures for the preparation of ex.IAs seem to be working. The most encouraging measure of progress is that, in half the cases, the ex.IAs process seems to have led to a re-design of the original proposal.

[20] See Green paper, Annex section II, page 5.
[21] Number of legislative proposals contained in the Commission legislative and work programmes table for 2003.
[22] Number of legislative proposals contained in the Commission legislative and work programmes table for 2004.
[23] Sum of Commission work programme list of legislative proposals corresponding to political priorities for 2005 and indicative list of other legislative proposals for 2005.
[24] "The EU's New System of Regulatory Impact Assessment - A Scoreboard", Frank Vibert, The European Policy Forum, March 2004.

It is equally welcome that the Commission has developed central EC impact assessment guidelines[25] to provide a coherent basis for undertaking impact assessments throughout the Commission, i.e. in all Directorate Generals.

BOX 6: One example of ineffective impact assessment: The planned Payments Services Directive

An example of ineffective impact assessment may be found in the preparation of the proposed Directive for a New Legal Framework for Payments in the Internal Market.

In February 2005, the Commission issued a working document for the preparation of an impact assessment on the proposed directive.

Apart from the need to clarify the methodological approach (in terms of country comparisons, missing explanations, non-acknowledgment of the different developments of the payment sectors in different Member States), the working document did not assess whether the provisions included in the proposed directive are necessary, appropriate and reasonable, and seemed to pursue a general justification of the Directive instead.

In particular, the working document lacked an assessment of the legal and economic implications of the individual provisions of the proposed Directive. In addition, it failed to identify any potentially negative consequences for customers and credit institutions, while predicting that the Directive would exclusively bring about beneficial effects.

Furthermore, the draft working document did not take into account the fact that many provisions of the proposed Directive also affect the relationship between providers. As such, the document ignored level playing field issues (between payment providers and banks) as well as the need for agreeing supporting rules for the relationship between providers (e.g. right to redress between providers in the case of strict liability in the user-provider relationship based on fault).

The impact assessment equally disregards the positive results of self-regulation achieved so far such as the introduction of IBAN and BIC, the Credeuro[26] and the Interbank Convention on Payments[27]. There is no recognition of the fact that the payment industry meets the demand for cross-border payments efficiently by a full range of services such as credit transfers, ATM withdrawals, debit and credit cards (Point of Sale).

The assessment is in particular insufficient regarding the impact of the proposed directive on the current situation, specifically on market prices. The potentially negative effects of over-regulation are neglected in the working paper. In this respect, should payment operators be required to bear the high liability risks envisaged in the proposed directive, their costs would be increased, which would result in an increased final price to be paid by the user. Likewise, the paper does not look at the experience made with EU Regulation 2560/2001 with regard to price and cost structures.

[25] "Impact Assessment Guidelines", June 2005, SEC (2005) 791, European Commission.
[26] The Credeuro Convention foresees three banking days execution time.
[27] The Interbank Convention lays down that the full transfer amount needs to be credited.

BOX 7: One example of a seemingly effective impact assessment - Clearing and Settlement

The impact assessment that the Commission is carrying out currently in the field of securities clearing and settlement seems to be shaping up well as an example of effective impact assessment. It is also a good example of a transparent process. In effect, the structure for the Impact Assessment is available on the Commission's clearing and settlement website, which has a dedicated page for all of the meetings and documents of CESAME, the Clearing and Settlement Advisory and Monitoring Group that the Commission set up in July 2004 to help it in its work of tackling the Giovannini clearing and settlement barriers. The Commission started work on the impact assessment in the last quarter of 2004 and expects to complete it by end 2005. In the interim presentations on progress are made regularly at the CESAME meetings. Final judgement on the effectiveness of the impact assessment must be reserved however until it is finalised and presented to the public.

BOX 8: One example where no impact assessment has been undertaken: The Consumer Credit Directive proposal

While the Consumer Credit Directive (CCD) suffered from a lack of in-depth consultation, as noted above, it also suffered from the lack of any kind of impact assessment. Due to the significant concerns which the original CCD proposal raised, a number of consultants and academics presented their own impact assessments (e.g. the Oxera study in the UK or the RWI Essen study in Germany) pointing out the potential negative impact that some provisions of the CCD could have on the whole economy (e.g. the 14 days right of withdrawal period or the duty to advise). In spite of the above and in spite also of the strong calls upon the Commission to present an impact assessment on the CCD, none has been carried out to date.

- *Supervisory convergence: A more active role for the EU supervisory networks*

The ESBG supports the Commission's view that full cooperation between the level 3 Committees (CESR, CEBS and CEIOPS) is needed to ensure legal coherence. It also welcomes the Commission's preference for strengthening supervisory networks as opposed to putting in place a single supervisor. This being said, the Commission's powers of enforcement should not be delegated to national supervisors. As such, while it is true that a well-functioning level 3 of the Lamfalussy process can help in ensuring legal coherence and coordinated implementation, this cannot be at the expense of the Commission's enforcement role under level 4, which must be fully respected.

- *The Lamfalussy procedure*

The Lamfalussy process was initially designed for the securities area, as a way to improve the quality of legislation. It is based on a number of key principles: split between framework principles and technical details, with adapted legislative procedures to pass and update rules, wide-ranging consultations with market participants, mechanisms to

ensure the coordinated implementation of the adopted legislation across the EU and mechanisms to enforce the rules. While it is at this stage not possible to draw final conclusions on the functioning of the Lamfalussy process, it is the ESBG's opinion that the Lamfalussy process has so far allowed to achieve most of its stated objectives. The ESBG therefore expressed its support for the proposed extension to the areas of banking, insurance and asset management.

This being said, the ESBG also believes that the Lamfalussy process entails risks which will have to be carefully assessed by the new Inter-Institutional Monitoring Group and the EU institutions, respectively.

First, a more efficient monitoring of the respect of the mandates accorded to the Lamfalussy bodies (CESR, CEBS, CEIOPS) should be organised. This is particularly true with regard to CESR (e.g. CESR ECBS standards on clearing and settlement).

Second, if we had to mention a further risk, it would be the tendency of the Lamfalussy process to increase the burden of regulation, by creating overly prescriptive rules. The ESBG for example pointed out in its responses to CESR and to the Commission areas of the level 2 measures for the Prospectus Directive and the Markets in Financial Instruments Directive which it regards as far too prescriptive, with not enough consideration given to the proportionality principle. The risk of overregulation is exacerbated by the fact that above the level 2 implementing measures, guidelines, recommendations and standards are developed at level 3, which add to the general regulatory burden. Although the intention of the Lamfalussy procedure was to achieve consistent regulation and to avoid overregulation, market participants doubt that the latter has yet been achieved.

It should be noted on the other hand that some recent developments in the context of the Lamfalussy process add to its proper functioning. As an example, we would like to point out the Commission's commitment to be transparent and to consult on its proposed level 2 Directives or Regulations before submitting them to the European Securities Committee (ESC). ESBG Members are of the opinion that this step is a key element in the whole process, notably because it gives an opportunity to comment on proposed implementing measures drafted under the form of legal text.

As a matter of fact, these comments point to the importance of applying the above listed principles on better regulation to all levels of the European decision-making process and to all policy-making and advisory bodies. As such, they should be observed not only by the European institutions, but also by the supervisory authorities as well as the comitology bodies, both traditional and of the Lamfalussy type. This is even more relevant given the current popularity of the comitology process of decision-making in financial services regulation (see below).

In this context, we would like to mention that we are concerned by the current trend of extending the use of traditional comitology procedures to a large number of areas (e.g. statutory audit, accounting, anti-money laundering, payments, etc), without following the principles on which the Lamfalussy process is built. Specifically, the ESBG believes that the success of the Lamfalussy process is to a large extent due to the high level of transparency involved and to the extensive consultations performed with the industry. As such, in the areas where it has been decided to make use of the traditional comitology procedure, not only should a commitment be made to consult widely with the stakeholders and to work in a transparent way, in line with the better regulation principles, but other

key features of the Lamfalussy process should also be taken on board, such as the setting up of market panels to assist the relevant committees.

It should be pointed out finally that in the context of the Lamfalussy process, it has to be assured that the correct institutional balance has been established and the requisite industry consultation procedures have been followed. As a reminder, the ESBG was supportive of the extension of the Lamfalussy procedure to cover all kinds of financial services, provided that full industry involvement is assured, and that the rights of the European Parliament as a co-legislator are guaranteed.

3. Consolidation of financial services legislation over the 2005-2010 period

In response to the European Commission's questions to stakeholders on section 3 – 'Consolidation of financial services legislation over the 2005 2010 period'

3.1. Finish remaining measures

The ESBG very much supports the Commission's intention to focus the next twelve months on completing the "unfinished business" of the FSAP.

With regard specifically to two of the three 'key measures' now under preparation by the Commission, clearing & settlement and payments, the ESBG has the following views:

Clearing and settlement

The ESBG supports the European Commission's work on an Impact Assessment in order to quantify the benefits of integrating the post trade industry and also to assess whether or not there is a need for a Securities Clearing and Settlement Directive and, if so, what should be the content of such a Directive.

The ESBG believes that it is likely that a Framework Directive will be necessary to establish a uniform European legal and supervisory framework for the industry and also to prescribe strong governance rules for CSD type organizations that enjoy a quasi monopoly position on the market. However, in our view it is necessary to wait until the end of 2005 for the results of the Commission's Impact Assessment to prove the case for such a Directive and the areas it should cover.

In the event that the Commission does decide to issue a Directive, it should be confined to:

- Providing clear definitions of the components in the post–trade value chain as well as the risks associated with these functions, that will stand the test of time;
- Providing access rights for infrastructure providers of clearing and settlement services;
- Providing passporting rights for infrastructure providers of clearing and settlement services using the country of origin principle to determine the relevant regulatory regime; and
- Specific governance rules for monopolistic providers of clearing and settlement services, if the Commission's Impact Assessment shows that public interest and user needs cannot be addressed adequately by existing EU Competition Rules.

The ESBG is pleased to note that a similar position has been adopted by the European Parliament in the Resolution it adopted on clearing and settlement on 7 July 2005.

A further concern for the ESBG is with regard to the Standards for Clearing and Settlement in the European Union jointly developed by the European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR). One of the most important concerns is the intention of the ESCB and CESR to include custodian banks under the scope of the Standards. This was one of the outstanding issues recognised by the

ESCB-CESR when they adopted their Standards in October 2004 and they have made a commitment to resolve this along with some other outstanding issues, in consultation with market participants, during their work on developing an assessment methodology for the Standards. This process is ongoing.

The application of the Standards to custodian banks, in particular Standard 9 on credit and liquidity controls, may have the effect of imposing extra capital, reporting, intra-day risks and collateralization requirements. The banks should be supervised by banking supervisors and the direct application of this principle to the ESCB-CESR Standards would place the activities of all banks in the clearing and settlement process in the hands of the banking supervisors and thus make the distinction between significant custodians and others unnecessary. The ESBG believes that any additional regulation arising from the Standards for banks would ultimately result in an increase of costs and risks by creating major legal uncertainty without, on the other hand, providing any proven improvement in terms of efficiency or (systemic) risk mitigation in the framework of European markets. Finally, it would also result in higher costs for the end investor and place European custodian banks at a disadvantage vis-à-vis their international competitors.

Planned Payments Services Directive

Among key measures currently under preparation, the Commission also mentions the (possible) legislative proposal on payments and emphasizes that the preparation for this proposal will involve thorough impact assessment and wide stakeholder consultation.

The ESBG would first of all like to commend the Commission on the comprehensive consultation with all stakeholders, although it was sometimes felt, that the industry's view was not sufficiently taken account of. In this context, and as equally suggested above[28], the ESBG would like to suggest to the Commission to provide justifications for its decisions so that the mutual understanding of the position is enhanced. We have already provided our opinion on the (ineffective) impact assessment to the planned Payments Services Directives in our response to section II[29].

In addition, we would like to reflect upon some open policy issues with reference to the planned payment services proposal:

- Legislating the world? – The planned proposal covers payments in any currency, regardless of where a payment service provider, or user is located (i.e. covering one leg of a transaction where the user or provider is outside the EU), while the Directive seeks to "*approximate the laws, regulations and administrative provisions of the Member States with a view to achieving an internal market for payment services in the European Union*." In effect therefore, the ESBG believes that the scope thus defined is at odds with the claimed objective.

- Lower certainty for customers? The planned Directive seeks to 'improve competition' by creating the notion of 'payment institutions', which are distinct from duly capitalized, managed and supervised credit institutions as they are merely requested to "*make adequate arrangements to keep payment service user's funds separately from their own accounts*". The ESBG fears that by not

[28] See page 21 of this paper.
[29] See page 23 of this paper.

prescribing arrangements that protect these funds in case of bankruptcy or other proceedings, the proposal could potentially foster customer confusion, increase risk, and jeopardize public confidence in the banking sector.

- Higher Market Prices? The ESBG believes that contrary to the objective of the Commission, the implementation of the Directive might lead to higher market prices as the Commission in an attempt to mitigate the threat to customer confidence is increasing protection levels. However higher protection will increase payment service costs for customers.

- Maintenance of Structural Obstacles? The ESBG believes that draft Directive falls short of addressing some structural obstacles to an internal market:

  First, it is still (by far and large) impossible for banks and professional cash handlers to transport cash across borders within the EU. This prevents among others, true competition between non-cash payment instruments.

  Second, credit institutions' reporting obligations (e.g. balance of payments) still differ widely across the EU. The impact of which is a direct increase in their costs and their customers' obligations.

In response to the EC question on whether one agrees with the identified measures where the Commission might decide to take no action?

ESBG broadly supports the Commission with regard to the suggested areas where it 'may decide not to make a proposal'. In addition ESBG believes the following concerning two of those areas:

Rating agencies

The ESBG supports the advice delivered to the Commission by CESR, making it clear that the IOSCO's Code of Conduct should serve as a legal basis for rating agencies. The Code contains the basic requirements for rating agencies and it constitutes an internationally accepted standard. Accordingly, we believe that no additional regulation is currently needed at the European level. This does not rule out the Code containing more specific or expanded provisions when it is implemented in the European Union. The primary aim should always be to ensure an efficient credit rating process for European investors. European rules for rating agencies should not lead to ratings of European companies being regarded by investors as poorer in quality than ratings of companies from other regions. This would have negative consequences for the European debt issuers in the market place.

The ESBG believes that the priority issue should be to safeguard the legitimate interests of issuers and investors, while preserving the independence of credit rating agencies. This means in particular enforcing the existing obligations for rating agencies to safeguard these interests and putting in place mechanisms to ensure compliance with these requirements.

Financial analysts

The ESBG considers that financial analysts are sufficiently regulated within the framework of the Market Abuse Directive and hence that no further legislation is currently needed.

On the area where the Commission may reconsider its proposal:

The Hague Convention

The ESBG welcomes the step announced by the Commission to prepare by end 2005 a legal assessment evaluating the concerns raised and then decide whether changes are needed to the current signature proposal. The ESBG is confident that the industry will be properly involved in the revision of the Commission's proposal following the legal assessment.

3.2. EFFICIENT AND EFFECTIVE SUPERVISION

In response to the EC's question on one's assessment if the existing regulatory and supervisory framework is sufficient to tackle the supervisory challenges in the years ahead, what are the gaps and how these can be filled most effectively?

General comments

Challenges of a supervisory framework for the EU

The ESBG welcomes the Commission's initiative to include a specific section on supervision in its Green Paper, thereby highlighting the importance of achieving an effective and efficient system of supervision of EU banks and financial markets. The ESBG supports the view that without an appropriate supervisory framework for banks and investment firms in the European Union, some of the potential of the FSAP might not be deployed.

As a matter of priority, any supervisory framework must meet the traditional objectives of prudential supervision (e.g. ensure the safety and soundness of the financial system). It must also address the specific concerns of cross-border groups and at the same time ensure that the supervision of locally-active institutions does not become inadequately burdensome. Given the potentially important competitive bias of supervision, efforts must be made to ensure the competitive neutrality of any new measure in this area, as well as to guarantee a level playing field for all market participants.

With regards to the proposed strategy, the ESBG welcomes the Commission's proposal to follow an evolutionary, step-by-step approach. As changes in the supervisory framework can potentially lead to significant additional requirements for banks, or to an inadequate supervisory structure that could result in an unsound financial system, quality should always prevail over speed. This being said, the ESBG would like to encourage all bodies to draw as much benefit as possible from the momentum that currently exists in the area of supervision, materialised by the establishment of CEBS, the adoption of the CRD and the extension of the Lamfalussy process. As a conclusion, it should also be

stressed that prudential supervision is an area where the "better regulation principles" should be applied seriously, including in-depth consultation with interested parties and cost-benefit analyses.

Build on existing structures

The FSAP introduced a series of new elements that will deeply impact the supervisory architecture in the European Union. In the area of prudential supervision, the major changes are the adoption of the Lamfalussy process and its extension to the banking field, the establishment of the Committee of European Banking Supervisors (CEBS) and the forthcoming adoption of the Capital Requirements Directive. Specifically, this Directive contains provisions which, without seeking to overhaul the EU supervisory framework, adequately address some of the concerns raised by EU banks: specific powers granted to the consolidating supervisor, requirements for competent authorities to cooperate closely, exchange information and consult each other in specific cases, provisions relating to emergency situations and an obligation for supervisory authorities to disclose information.

The ESBG is of the opinion that all these elements have the potential to increase the efficiency and effectiveness of the supervision of EU banks. As such, as proposed by the Commission's evolutionary approach, the new framework should be properly tested first, before considering alternative solutions, such as an extension of the powers of the lead supervisor or the setting up of new structures.

Ensure a level playing field in the area of supervision

The ESBG has always been a strong advocate of the importance of ensuring a level playing field within the European Union between all credit institutions, whatever their size or complexity. It is against this background that we supported the proposed universal application of the new Basel II framework in the European Union, as opposed to the bifurcated approach sometimes envisaged. Recent developments in the USA tend to confirm our belief that this is the right approach.

The same approach must be pursued in the area of prudential supervision. It would for example be inappropriate to establish a two-tier system, whereby "European" banks would fall under a specific, European system of supervision and local credit institutions would fall under the remit of their local supervisor. Despite falling under a different supervisory regime, 'pan-European' and 'local' banks would still provide services in the same markets at the same time. This could lead to a distortion of competition which is not in line with the principle of a single market. Similarly, extending the powers of the Home (consolidating) supervisor to additional areas of banking supervision as sometimes suggested would pose questions in terms of level playing field, in light of the diverging supervisory practices currently applied within the European Union. In this context, the ESBG fully supports the Commission's view that enhancing the convergence of supervisory practices is an important objective for the years to come.

Comments on the "Challenges" section

The ESBG believes that the Commission rightly presented in this section the challenges facing the future EU supervisory framework. In particular, we support the view that supervisory cooperation is important, as well as ensuring more consistency between regulators and supervisors.

We would like to add however that an additional challenge will be to ensure that appropriate responses are found to the specific concerns of banks of all sizes and levels of complexity. As such, for example, it must be guaranteed that the challenges mentioned (e.g. more streamlined and less costly cross-border and cross-sectoral supervisory arrangements) are met without putting additional burden on those banks that are predominantly active in their national market, or whose size, risk profile and complexity implies that they do not require the same level of supervision as cross-border, cross-sectoral, complex institutions. Put differently, the principle of proportionality should be given due consideration specifically in the context of banking supervision.

Comments on the "three-step, evolutionary approach" section

As indicated above, the ESBG believes that the three-step approach proposed is an appropriate response to the current state of play in the area of prudential supervision, and to the challenges it will face in the years to come. Specifically, the ESBG fully supports the Commission in that the development of new structures should be a policy response only in so far as it is clear that the existing structures do not constitute an appropriate response to the issues to be addressed. In fact, it is our opinion that establishing new structures is quite often not the right way to address problems, as while the structures change, very often the problems remain.

In the specific case of the supervision of credit institutions, we are convinced that achievements can be made through enhancing confidence between competent authorities, increasing the convergence of practices, and having in place a solid framework for cooperation and exchange of information. We are pleased to note that many of the actors concerned, notably the Members of CEBS, have shown a clear willingness to move along this path.

Step 1

As regards Step 1, the ESBG agrees that supervision should strike the right balance between favouring the competitiveness of the financial sector and at the same time ensuring its soundness and safety. Actually, prudential supervision should strive to be as neutral as possible on the business orientations and evolutions of the supervised entities, and be as little burdensome as possible on them, while achieving its overarching objective, which is to guarantee the soundness and safety of the financial system.

Step 2

The ESBG fully supports the three areas of action mentioned as part of Step 2. As already pointed out, the ESBG regards enhanced convergence of supervisory practices as a prerequisite before it can be envisaged to move away further from the current distribution of powers and responsibilities, such as would be the case for example with an extension of the powers of the consolidating supervisor. In addition, enhancing the convergence of

practices would be a good way to increase the confidence between the different national competent authorities, and this in turn could facilitate the delegation of powers, if and when relevant.

Along the same lines, we agree that practical arrangements should be developed to facilitate the cooperation between supervisory authorities. In this context, the Commission is right in mentioning the development of common reporting templates as a way to enhance cross-border regulatory and supervisory cooperation. Ideally, this should also be to the advantage of EU credit institutions, which could benefit from a decrease of the reporting burden they are faced with.

The ESBG is however concerned about the mention that "more consolidated supervision is a legitimate demand from the industry", but that "this should be a long-term objective". The ESBG is rather of the opinion that the long-term objective should be, quoting the title of this section of the Green Paper, "efficient and effective supervision". Whether this should translate into "more consolidated supervision" should be assessed on the basis of a proper analysis of the functioning of the EU supervisory framework, as modified and improved by the introduction of all the new provisions already mentioned.

With regards to the proposed areas of work, we fully support the Commission's commitment to work towards "removing inconsistencies within and between Directives, paying particular attention to cross-sectoral issues (i)". As a matter of fact, this step should be a fundamental part of the post-FSAP programme of the Commission, specifically after so many changes have been introduced by the FSAP in the different financial services sectors. Some cross-sectoral issues which deserve attention have already been identified, such as the rules applicable to financial services firms regarding outsourcing, or the rules in the area of compliance. In this context as well, we would like to commend the level 3 committees for their declared willingness to work together in cases where such cross-sectoral issues arise.

We would also encourage the Commission in its pledge to bring "greater clarity in the roles and responsibilities of supervisors (ii)". As already pointed out, we believe that the Commission took the right decision in not introducing fundamental changes to the principles in force regarding the distribution of powers and responsibilities between home and host supervisors. These principles have the advantage of legal clarity, and indeed of establishing a balance between "powers" and "responsibilities". The ESBG is of the opinion that whatever solutions are envisaged for the future of prudential supervision, maintaining such a balance between the powers of a supervisor and its responsibilities in case of problem is of the utmost importance.

Against this background, the ESBG commends the Commission for its proposal to address the issues mentioned (liquidity, crisis management, lender of last resort, deposit guarantees, and winding-up and bankruptcy proceedings). These questions are linked to the current balance between powers and responsibilities, and accordingly must be addressed before the supervisory framework in place can be modified.

Finally, the ESBG fully supports the objective of "convergence of supervisory practices (iii)" as well as the rather practical and flexible approach proposed to achieve this. In fact, it is our opinion that this objective will be best achieved by having the Commission and other relevant bodies (notably the level 3 Committees) making use of the full range of tools and methods at their disposal. In this context, the ESBG is pleased to note that

the Green Paper mentions the importance of working in a transparent manner and in a way that respects democratic accountability. Moreover, it is fair to stress the importance of the need for supervisors to ensure that the standards they develop are fully compatible with binding European legislation and must not prejudice the political process. Serious questions have arisen in recent years in situations where standards were developed by the national supervisors in areas not covered by European legislation, transforming *de facto* these standards into European legislation. The level 3 Committees should make efforts to avoid as far as possible such situations in the future by refraining from developing level 3 guidelines in areas not covered by EU legislation.

BOX 9: ESBGs views on crisis management

Particular attention should be paid to the area of crisis management, as banking crises are usually characterised by low frequency but high intensity. This is particularly true in the case of systemic banks, with important activities in several countries. In an integrated market, the problems in one market spread quickly to other markets.

There are currently around 40 cross-border banking groups in the EU area. This figure could even get smaller, on the basis of the current trend for internationally-active banks to merge. These credit institutions, often described as being “too big to fail”, could in fact also appear to be “too big to save”. As such, as it is not possible for one authority to deal with a problem related to such a bank on its own, it is of particular importance to clarify the tasks, roles and responsibilities of all the bodies involved in a crisis situation. This includes notably the national competent authorities, central banks and ministries of finance. It is therefore necessary to have a process in place, whereby the smooth flow of information between these different bodies is ensured. The development of Memoranda of Understanding between the finance ministries is a step in the right direction, which should be completed by further initiatives in the coming years.

The ESBG would like to point out here that centralising the responsibilities can result in also centralising and concentrating the risks. As Mr. Nyberg, Vice-Chairman of the Financial Services Committee (FSC), indicated recently, “When all the eggs are put in one basket, they tend to break when the road gets bumpy”. This well-known principle of portfolio management should also be given due consideration in the area of prudential supervision, and specifically crisis management.

The request by some banks of granting more power to the consolidating supervisor would entail the risk of making it “less attractive” for a Member State to be a host country, given the resulting imbalance between power and responsibility. This might in fact act as a barrier to the integration process, as host countries might be willing to find ways to limit their responsibilities as host countries. Although this risk has not materialised yet, it should not be neglected.

In light of the above, the ESBG strongly believes that there is a need to develop structures which address the current shortages in the area of crisis management without undermining the roles and responsibilities of both, the home and the host supervisors.

Step 3

Comments were already made throughout this response on the importance, in the opinion of ESBG Members, of envisaging the establishment of new structures only if the objective of "efficient and effective supervision" cannot be reached by building on the existing rules and mechanisms.

3.3. ENABLING CROSS-BORDER INVESTMENT AND COMPETITION

The ESBG views on banking consolidation in Europe were made known via a position paper published in 2004[30]. Some of these views were also reiterated in the ESBG response to both the Commission and CEBS, in the context of the Commission's recent investigations on the obstacles to cross-border consolidation.

The ESBG fully supports the view of the Commission that consolidation in the financial services sector should be driven by the market, though would suggest that at the same time financial soundness and stability of the financial system must be ensured in *all* areas (as opposed to only in *some* areas as stated in the Green Paper's section 3.3, page 10).

In line with the Commission's views expressed in the Green Paper, the ESBG also believes that consolidation "is not an end in itself" and that "takeovers and mergers will not automatically produce improved economic performance". Indeed, ESBG expressed as much in its aforementioned position paper on consolidation.

Low levels of cross-border consolidation mainly a reflection of economic realities and local characteristics

In terms of possible explanations to explain the low levels of cross-border consolidation, it is the view of ESBG that there are a number of reasons why European banks are reluctant to engage in cross-border M&A. The most important reason is that benefits from synergies in cross border deals are less than in domestic M&A. Cost rationalisation via, for instance, the reduction of branches, or cutting overlapping products, though possible in domestic mergers, are not options in cross border mergers.

Other important 'barriers' that prevent, or render more difficult, the achievement of operating efficiencies in cross-border M&A, and therefore offset most of any potential efficiency gains from cross-border consolidation tend to reflect differences between the home and the host market, such as difficulties in managing and monitoring foreign branches, differences in language and/or culture, differences in board structures and corporate governance, differences in tax regimes as well as the specificities of 'local' product and service demands.

Natural 'barriers' are intrinsic to European retail banking markets

ESBG members view those cultural and local product and service demand characteristics as specificities which, if they should be referred to as 'barriers' at all, can and should be referred to as 'natural or non-removable barriers' in the sense that they are intrinsic to European retail banking markets. They will always be important features of cross-border deals which no amount of market integration is likely to remove. They also explain why, as the Commission rightly states in the Green Paper, the debate on cross-border

[30] "European banking consolidation: a considered analysis of the retail banking market and the position of the European Savings Banks Group", ESBG, December 2004.

consolidation "isn't about the overall level of foreign participation in individual Member State's financial sectors".

Additional barriers to cross-border consolidation

Other important obstacles to cross border consolidation which ESBG members have identified include differences in taxation regimes. Such differences might indeed impact shareholder decisions to engage in cross-border M&A if, for instance, the implication is higher non-refundable withholding tax on dividends, which would impact negatively on their investment returns.

Multiple reporting requirements were also identified by ESBG members as important obstacles to cross-border mergers, as these can impose additional costs on the merged entities which might dilute the potential cost synergy gains from such a deal.

Finally, certain inconsistencies in EU-Directives as reported in our response to chapter 4 of the Green Paper below[31] might equally prevent the achievement of efficiencies in cross-border consolidation processes.

Access to markets, vital for cross-border business, is assured across Europe

While many of the above listed barriers to cross-border consolidation are non-removable or natural barriers, cross-border business can and will happen as long as access to national and local markets is assured. From the experiences of members of the ESBG that are active/have been active in cross-border M&A as well as from the opinions of members that have considered engaging in cross border M&A, there are no existing barriers with regard to national legislation preventing a credit institution from entering a foreign market. Recent cross-border (M&A) activities[32] are one further indication to confirm this view.

No particular legislative action needed with an aim to improve cross-border consolidation

On the subject of the amendment, deletion or issuance of legal provisions in order to facilitate cross-border consolidation, ESBG does not believe that any particular action is warranted. Specifically, there is no indication that the applications of either Article 16 or Article 7 of Directive 2000/12/EC have hindered mergers and acquisitions in Europe.

While ESBG does agree with the Commission that supervision should not be misused for protectionist purposes, ESBG also supports CEBS's advice that "Article 16 should not be changed solely to facilitate cross border consolidation if to do so would risk a reduction in the prudential benefit currently provided by Article 16[33]". In line with the responses by the rest of the industry to the CEBS questionnaire on the barriers to cross-border consolidation, ESBG recognises the role of Article 16 in preserving financial stability and the need for discretion in its implementation.

[31] See page 49 of this paper, section on "Codification and possible simplification of existing rules on information requirements" where we make concrete proposals in terms of streamlining pre-contractual information requirements, the definition of consumer and the right of withdrawal.

[32] E.g. Banco Santander- Abbey National; Swedbank – Hansabank; Unicredito – Hypo-Vereinsbank.

[33] "CEBS Techical Advice Paper to the European Commission on a review of Article 16 of Directive 2000/12/EC", CEBS, 31 May 2005.

3.4. The external dimension

In response to the EC's question on the objectives, sectors to be covered and the priority areas in regulatory and cooperative activities on a global scale?

International dialogue

As was said in our response to the key political orientation section of the Green Paper, ESBG is very supportive of the idea to strengthen relations between Europe and other economies such as the US, Japan, China, and India in the area of financial services. In this context, the ESBG clearly welcomes the financial market dialogue between the US and the EU and would not only recommend intensifying this dialogue, but also starting similar initiatives with China, Japan and India.

BOX 10: The EU-US Retail Banking Forum – an initiative by the WSBI[34]/ESBG

The ESBG is contributing in that regard via the creation of the 'EU/US Retail Banking Forum'. The Forum will be an informal network open to professionals in the fields of retail banking and financial regulation from all related backgrounds (policy-makers, bankers, advisers, regulators, academics etc.), working either in the EU or the US. It will represent a platform for the exchange of views, knowledge and opinion between professionals in the field of retail banking and financial regulation in the EU and the US.

The aim of the Forum will be to promote a better understanding of the systems of retail banking and financial regulation of each continent, as well as of the issues relevant to each market. Examples of areas where views on regulatory best practice can be exchanged include supervision, payments and capital markets. These areas will be the focus of this year's conference of the 'EU/US retail banking Forum' which will take place this autumn in Brussels. WSBI/ESBG will be organising and hosting other such conferences every year hence, the location of which will vary from year to year between Brussels and Washington.

A European Voice in international fora

The increasing need of integrating international standards into the European acquis communautaire also creates new issues, principally because traditionally, such international agreements are agreed upon by and directed at national rather than EU regulators and supervisors. One example is that the implementation of recommendations by the Basel Committee and/or IOSCO is directed directly towards national regulators. It is then the responsibility of the EU institutions to adopt or integrate – or not - these international rules into implementable EU law.

[34] WSBI = World Savings Banks Institute.

As decision-making at the international level via the relevant international standard setting bodies has grown in importance, in has become more important to contribute to more effective international standard setting and influence the international process appropriately. The ESBG also believes that it is vital for the EU to develop a stronger voice at international level to influence the outcome of the deliberations on international standards.

In terms of the required implementation of international standards, each decision to look towards international bodies for the establishment of global standards needs to be weighed up carefully at the European level, especially in terms of the consistency of interpretation and implementation. Accordingly, decisions to use international standards as the basis for European legislation need to be carefully evaluated on a case-by-case basis. Whichever procedure is adopted to integrate international standards, it is imperative, that the procedure is able to ensure that the needs of all economic actors, big or small, are taken into account. Moreover, the ESBG strongly believes that such standards should be developed along the lines of the “same business, same risk, same rules” principle.

Accountability of international standard setters

Finally, international standard bodies should be subject to good corporate governance principles (also in terms of representativity and their funding) and should be fully accountable to their constituents.

4. POSSIBLE, TARGETED NEW INITIATIVES

In response to the European Commission's questions to stakeholders on section 4 – 'Possible, targeted new initiatives' - of its financial services policy for the period 2005-2010, namely:

- [Do you] agree with the new identified priority areas?

Priority areas identified

In the Green Paper, the Commission identifies two clear policy areas (asset management and retail financial services) where initiatives might bring benefits to the European economy and therefore these areas are considered to be possible targets for new initiatives.

Retail financial services

One of the policy areas identified as a main priority for further integration is retail financial services. According to the EC, retail financial services are deeply fragmented markets and therefore in need of further integration. As explained earlier, the ESBG questions the reference to Europe's retail banking markets as being "fragmented". The current market share of foreign institutions in Europe's domestic retail banking markets is at least as much the result of the factors such as the high competition in retail markets, the consumer's trust relation developed with local providers, etc, as any other perceived barrier to cross border activity[35].

As such, the ESBG acknowledges that in retail financial services, product characteristics, distribution systems, consumer protection, contract law, differences in consumption culture or other economic factors not only play a more prominent role (as suggested in the Green Paper[36]) but they are fundamental features in these markets which render the comparison between integration of wholesale markets and retail markets (for financial services) inappropriate[37]. The ESBG would therefore reserve its judgement as to whether the identification of retail financial services as a priority area is appropriate, but welcomes the Commission's emphasis that any initiative in this area should bring tangible benefits to the European economy and - we might add - ultimately to the consumer.

Asset management

In contrast, the ESBG welcomes the Commission's initiative to review the UCITS legislation this summer. The Green Paper is perceived as an appropriate opportunity for ESBG members to comment upon both positive and negative practices they are facing as active market participants. ESBG is especially pleased to note that the Commission intends to assess UCITS by taking into account the need for appropriate protection of retail investors.

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[35] For further details on this position, see Box 1: A vision of Europe's retail banking markets, Section 1 – Key political orientation (page 9).

[36] See Green paper, Annex I, Section VII – Retail financial services, page 17 – The way forward.

[37] For further details on this position, see Section 1 – Key political orientation.

In particular, we consider it important for the investor to have any information that will be necessary for his investment decision. However we oppose the suggestion submitted by the Commission's Asset Management Expert Group in its Final Report that 'high level standards for quality advice' be devised to ensure objective and independent advice with respect to the distribution of UCITS. We are rather of the opinion that high level standards are sufficiently guaranteed by Directive 2004/39/EC on Markets for Financial Instruments (MiFID).

In response to the European Commission's questions to stakeholders on section 4 – 'Possible, targeted new initiatives' - of its financial services policy for the period 2005-2010, namely:

– What are the (dis)advantages of the various models for cross border provision of services?

The ESBG believes that the provision of retail financial services in Europe is currently assured as retail markets work efficiently. Of the four distribution channels identified by the Commission, the first and the last option (i.e. consumer purchases the service from a provider in another Member State by travelling to that Member State; services being designed on a pan-European basis, even if delivered locally) are currently the options least likely to be used. The first option is interesting to a growing but still comparatively small number of mobile consumers, while the potential for the latter option is limited by intrinsic and natural barriers which will reduce the scope of such a distribution channel even if unjustified other barriers such as overlapping, multiple reporting requirements were removed. In contrast, the most successful distribution channels are most likely those where the firm ventures into the consumer's remit, either by way of physically offering and adapting their services to the local market (option 3) or providing their services via a distance marketing vehicle.

Possible ways to move forward

Should the EC finally decide to take new initiatives in the area of retail financial services, the ESBG recommends to fully endorse the better regulation principles. As explained earlier, the ESBG would encourage the EC to evaluate any possible proposal according to a check-list aimed at ensuring the appropriateness and potential benefits of a proposal[38]. If the outcome of the evaluation exercise recommends action, the ESBG would ask the EC to consider as first preferred approach the use of self regulation or co-regulation. Only if self-regulation or co-regulation prove to be inappropriate and/or insufficient, should the use of harmonisation be considered, and then the ESBG has made clear its strong preference for targeted harmonization over and above other models of achieving convergence in the levels of consumer protection at a pan-European level. In this light, the ESBG views the idea of a 26th Regime as a further possible option in the list of methods to improve cross-border activity in Europe, though as we explain below, the idea of a 26th Regime needs to be further examined to clarify exactly what its pros and cons are.

[38] See Section II, Evaluation check-list - Better regulation, pages 17 and 18 of this paper.

Self-regulation and co-regulation always a potential alternative to binding regulation

Self-regulation and co-regulation must always be considered as a potential alternative to binding regulation. In its response to the expert group reports on integration, the ESBG welcomed the banking report's recognition that "self regulation can be a flexible and powerful instrument" as well as the report's general support to using the most appropriate instrument for each policy objective.

The ESBG would also like to see an increased use of co-regulation as an alternative to binding regulation. Co-regulation means that stakeholders (businesses and consumers) jointly develop measures which will be then endorsed and adopted by the Commission and Member States as binding rules. Such a bottom-up approach would ensure effective and targeted measures addressing the issues identified by those who will directly benefit from the adopted rules.

Indeed, ESBG believes that part of the consultation exercise should be to assess on a case-by-case basis what type of regulation would serve as the best tool to achieve a particular outcome if there is a perceived need for action. Various regulatory options exist that range from self-regulatory methods to binding regulation, and the different types should be given equal consideration in discussions on devising regulatory solutions to European problems.

In considering the case for expanding the use of banking self-regulation in the EU, one must have regard to definitions; the advantages and disadvantages of self-regulation; and the pre-requisites for the effectiveness of self-regulation. In the area of financial services, there are few but important examples of self-regulation. For example, the European Code of Conduct on home loans, developed by the industry and consumers alike, has introduced an optimal tool to compare pre-contractual information of credit offers across the EU, the ESIS (European Standardised Information Sheet). In the context of SEPA, the EU banking industry has developed business requirements for a pan-European direct debit scheme. There are also several positive examples of self-regulation achieved so far in the area of payments, such as the introduction of IBAN and BIC, the Credeuro and the Interbank Convention on Payments. Against this background, the potential for further development of self-regulation and co-regulation cases in the area of financial services is considerably large.

Targeted harmonization

Examining the European regulatory approach more closely, it appears that the stated lack of integration in retail banking markets is being most commonly attributed to the presence of divergences in national legislation. The policy response therefore was to increase the number of provisions as well as level of harmonisation determined at the European level. With this in mind, current texts favour the objective of increasing cross-border activity, thereby addressing primarily the needs of the internationally oriented consumer.

While the opportunity to engage into cross-border activities needs to be assured, it should also be acknowledged that "maximalist"[39] EU harmonisation might open up possibilities

[39] "Maximalist", i.e. too far reaching, see Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers, COM (2002) 0443 final, 11 September 2002 (OJ C 331 E, 31/12/2002 P. 0200 - 0248).

to enter new markets, but could negatively impact national regimes, which have been developed over the decades. In addition, maximalist harmonisation, i.e. picking provisions with the highest level of consumer protection from the various national consumer law frameworks and condensing them into one European directive could lead to an increase of bureaucratic red tape and could potentially undermine the variety and choice of products.

Moreover, the ESBG fully supports the recommendations issued by the experts of the EC group on banking integration (part of the Stock Taking exercise on the FSAP) on harmonisation. The banking experts group report highlighted that if EU action is justified, the focus of attention should first be on the general principles (..) rather than an outright harmonisation of products[40]. Another recommendation relevant in this context says that harmonisation should apply only to items deemed important for integration[41] and any efforts to legislate retail services must focus on harmonisation that is necessary and sufficient to support each internal market objective in question (…)[42].

In the experience of European savings and retail banks, the majority of customers feel most comfortable with a proximity banking concept, i.e. "the bank around the corner", which they both know and trust. It seems therefore important to also bear in mind the expectations of those consumers who wish to stay local.

Translated into regulatory terms, this means that not every single legal provision needs to be harmonised at the European level. Local and regional economic actors need to be able to adapt their product and customer strategies against the background of the national context or a regional scenario. The deep-rooted commitment of ESBG members to their local customers does however not prevent them from accompanying their international orientated customers across the border. Despite their regional orientation, cross-border services of ESBG members can be assured via the vast European savings and retail banks network.

In short, rather than filling legislation with detailed provisions leading to across the board standardisation, a more nuanced and targeted approach is required with focused and tailor-made harmonisation, particularly at the level of principles (see Box 11, 12 and 13). In such a way, Europe's diversity of legal traditions may converge in a phased manner while at the same time enabling businesses and consumers alike to already take advantage of the benefits of a Single Market.

Provisions that are not subject to targeted harmonisation should in the meantime continue to be subject to the Rome Convention. In other words, mutual recognition of banking activities as laid down in the Second Banking Coordination Directive should stop where consumer protection regulation that passes both, the "proportionality test and the "general good test" starts[43]. Applying mutual recognition to all provisions of a directive which are not subject to targeted harmonisation would otherwise risk affecting consumer confidence as – in a cross-border context – the consumer would require information about consumer protection provision in another Member State, i.e. the home country provisions of the bank[44].

[40] EC banking experts report, para. 47.
[41] EC banking experts report, para. 48.
[42] EC banking experts report, para. 49.
[43] Both tests are mentioned in the Commission Interpretative Communication on freedom to provide services and the interest of the general good in the second banking directive, SEC (97) 1193 of 20 June 1997.
[44] As stated in the expert banking report, para. 47.

In response to the European Commission's questions to stakeholders on section 4 – 'Possible, targeted new initiatives' - of its financial services policy for the period 2005-2010, namely:

– whether there is a business case for developing a 26th regime, and which business lines might benefit?

26th Regime: need to clarify the concept and pros and cons of the Regime

To date, many parties across the financial services area have expressed themselves on their idea of a 26th Regime, and it seems clear that there are as many interpretations as there are expressions of views on the topic. For this reason, the ESBG is very much in support of advancing thought on this issue by formalising the debates at the European level in order to arrive at a mutual understanding and definition of the concept. This should also include the consideration of theoretical applications of possible targets under such a regime. The ESBG would be keen to participate and contribute to such a task.

The ESBG wants to make clear however that before the results of such discussions has objectively clarified what is meant by a 26th Regime, all parties should pronounce themselves with caution on the potential benefits of such a system. In addition, a preliminary ESBG assessment of the pros and cons of a 26th Regime, as ESBG understands it, leads us to the belief that it should neither be seen as a panacea to the problem of harmonization, nor as an alternative to targeted harmonization, but as an option that may have certain applications, in certain circumstances.

The idea of a '26th Regime' was put forward in September 2004 as a proposal by the European Financial Services Round Table to harmonize pensions products[45]. Their proposal is to create a separate pension structure which would operate alongside and complement existing national pension structures, which would be left undisturbed.

"The basic principles underpinning the creation of the stand-alone or '26th regime' structure include agreement by Member States on a single set of autonomous rules for pension solutions that would apply uniformly throughout the EU"[46].

This regime should be seen as an alternative to existing partially harmonised, national legal provisions, although many points of detail and in particular the relationship to national legal systems, still require clarification.

The 26th regime would recognise the existence of 25 different national regimes in the EU member States and would entail to establish a 26th regime, which would be optional, i.e. economic actors that are interested in EU wide operations could opt-into this EU regime (and thereby implicitly opt-out of their "national" regime).

It needs then to be decided whether a 26th regime will only be applicable to cross-border products, or whether it would also apply to products offered by a given provider in his

[45] "Creating a common structure for pan-European pensions", September 2004, European Financial Services Round Table.

[46] Idem.

home country. Applying it both at home and in a cross-border context would make more sense, as it is hard to imagine a bank developing a product which it will be able to supply in all markets except its domestic market.

The advantages of such a system, as far as the ESBG can see them, are as follows:

– It would allow providers of financial products who wish to offer products in several Member States to do so while not impacting those providers who wish to continue to operate only locally with any extra regulation.

– It gives consumers a choice between obtaining a product from a local provider offering products compliant with all national requirements or to utilise a new Pan-European product.

– It allows the development of a new, separate, legal framework, while avoiding having to reform existing domestic legal frameworks, which continue to exist in parallel.

Such a system also has disadvantages however. According to the ESBG, they are the following:

– If a 26th opt-in regime is created, which would be available for all providers of financial services, independent of whether they offer their services cross-border or exclusively within their country, it would necessitate specific EU legislation. This would most likely require regulation at the top level, i.e. combining the consumer protection levels of all Member States, as it seems very unlikely that a Member State would agree to such an alternative opt-in regime being lower than national provisions and therefore resulting in a flight of all national actors from the national regime into the opt-in regime.

– The 26th regime might open the door to EU wide product standardisation. These standardised products would most likely not reflect the economic realities / demand profiles of country-specific markets and these would be available at a premium cost to normal products given that they would have to reflect the highest consumer protection laws of the 25 Member States to receive approval by all Member States.

– Adjusting the national system interfaces with the 26th regime (for instance civil and procedural law) would be complicated.

– With the introduction of the 26th regime consumers will be confronted with two different legal systems – the “European” and the national one. This will not only create problems for the consumer, who has to decide which product and “regime” is more ideal for his needs, but also for banks in terms of providing advice (e.g. could a bank still offer products with a “lower” legal protection scheme without running liability risks?).

– If the 26th regime would only apply to cross-border operations, it could result in the creation of a two-tier regulatory system, creating an un-level playing field between those banks who operate exclusively in the “national” or the “European” regime respectively, while both will be competing on the same market for the same customer.

– Assuming that such a 26th regime is created at EU level as an opt-in regime, there is a risk that it might not be used due to the high protection level. What will happen then?

– It is not yet clear in which areas a 26th regime could provide added value: consumer law, prudential supervision, taxation, redress, others? Current pilot-projects are foreseen in the area of pensions (EFR) and for mortgage collateral (follow-up to EC Forum Group Mortgage Credit).

An ESBG assessment of the introduction of a 26th regime leads therefore to the conclusion that it would, on the one hand, generally leave existing national regulatory systems untouched and might provide a suitable tool for internationally active banks which request standardisation across countries to achieve economies of scale. Many questions surrounding the establishment of a 26th regime are as of yet however unanswered. This adds a layer of abstraction in the current debate which increases the need to be cautious about any assessment at this stage.

On the other hand, the creation of a 26th regime might result in the highest levels of regulation, the application of which would neither be in the interest of banks nor consumers. Finally, the introduction of an opt-in system could be a first step towards a two-tier regulatory system, which is in direct contradiction with the principle of "same business, same risks, same rules" governing EU financial services regulation so far.

In response to the European Commission's questions to stakeholders on section 4 – 'Possible, targeted new initiatives' - of its financial services policy for the period 2005-2010, namely:
– How to enable consumers to deal more effectively with financial products and whether this means more professional and independent advice, improved education or financial literacy training are needed?

Advice or information?

While the ESBG believes that any attempt in improving financial literacy and education in financial matters deserves the fullest support, it is critical as to whether this objective could be reached with '*more professional and independent advice'*. Rather than creating greater dependency from banks, a debate should be had at the European level about the notion and image the EU legislator has developed about the average consumer. Once agreement has been reached on this matter, it is then important to put the consumer in a position of making an informed choice rather than declaring him/her incapable of managing their own affairs by way of taking their decisions for them.

As a first step, the ESBG believes that the Commission should initiate an open debate at the EU level on the notion and perception of an 'average', mature consumer.

The rulings of the European Court of Justice (ECJ) should thereby be used as the overall guiding principle. The ECJ has adopted, through various judgments, an abstract concept of a consumer who is described as "*someone who is reasonably well informed and reasonably observant and circumspect, who takes in the information about the product on sale and hence the overall characterisation of the product attentively*". This ECJ interpretation of a consumer follows the idea of the consumer being a mature citizen, who

pursues his/her activities actively and responsibly by taking his/her decisions based on the relevant information acquired beforehand.

An image whereby a consumer is perceived as a weak, immature, uneducated person in need of extensive guidance and protection does not do justice to the majority of consumers, who are well able to take their own decisions and do not even wish their business counterparts to take that responsibility away from them. Certainly, a "nanny-state" where the consumer is reduced to a passive role is not to be wished for. On the contrary, in the ESBG's view, it is important to believe in the consumer's capacity to form and take his/her own decisions.

As a second step, the undisputed fact, that the information basis of even a "sophisticated" consumer could be inferior to that of his/her business counterpart, should be addressed. This could best be done by way of organizing a public debate with consumer and industry representatives about the information needs of consumers. In such a debate, the following questions should be addressed:

- What is the consumer's objective in the pre-contractual stage?
- Does the consumer consider the current quantity and quality of pre-contractual information appropriate to the objectives identified?
- Should the fact that comprehensive information is provided in the contractual stage, i.e. before/at the signature of the contract, influence the debate on pre-contractual information requirements (e.g. in terms of information overload)?
- What level of advice does the consumer expect?

For such a debate, it might be useful to look top the experience in other markets and investigate whether a "duty to advise" has been established in the US market. It is interesting to note, that US markets rate transparency and information higher than 'independent advice' and, as a consequence, such a duty to advise has not been created in any of the credit markets in the US.

In conclusion, the ESBG believes that a contractual relationship should remain as balanced as possible: while the consumer should be fully and appropriately informed about a given product(s), the EU legislator should refrain from requiring businesses to make up the consumer's mind on their behalf as this would result in assigning tasks unilaterally to one party of the contract. This ignores the responsibility of the consumers and creates considerable liability risks for the business, which could lead to an increase of costs.

ESBG's commitment to financial education in money matters

ESBG members are motivated by the strong belief that educated people increase their chance of becoming socially integrated active citizens, with access to the employment market. They are also convinced that financial literacy is a key hurdle that requires mounting in order to improve access to finance and the associated socio-economic benefits that financial access brings.

One of the key elements of European savings banks' social responsibility is a commitment to financial education on specific money matters, with the objective of preventing social exclusion and over-indebtedness.

Throughout Europe, our members pursue this objective by various means such as facilitating access to education and training through the granting of scholarships, the funding of university expansions and the development of pedagogical tools among others.

BOX 11: Stock Market Training (Planspiel Börse) – an ESBG initiative

At a European level, we can highlight one such successful pedagogical initiative that was generated through the efficient cooperation of European savings banks to bring financial education to a quarter of a million young people per annum: Planspiel Börse – Stock Market Training.

Stock Market Training is an online learning game, which was launched by the German savings banks in 1983. It now involves more than 300,000 participants per year from Austria, France, Italy, Latvia, Luxembourg and Spain, with the active support of their national savings banks association.

The exercise involves judiciously investing and managing a fictitious investment portfolio, buying and selling shares with the aim to help school students gain a more intimate knowledge of the workings of the stock market and the factors that influence its performance in both a realistic and hands-on way.

Stock Market Training has a host of positive effects from which one can draw lessons:

- This game combines study with informal learning experience that makes financial education more appealing to young people.
- It helps students gain skills that are essential for their integration in today's increasingly international social and working life.
- Understanding how stock exchanges work gives an insight into the functioning of market economies and their major players.
- Being able to gather information about a company quoted on the stock exchange and to transform it into investment decisions empowers students with the ability to master one's finances and to plan for the future.

The 'role play' formula has since been extended by certain savings banks to educate young people about other financial management situations such household planning or business start up financing, to much success.

In response to the European Commission's questions to stakeholders on section 4 – 'Possible, targeted new initiatives' - of its financial services policy for the period 2005-2010, namely:
– [Do you] agree with the issues identified in the above list of retail products, or would [you] suggest other areas where additional action at EU level could be beneficial?

Mortgage credit

The ESBG has taken note of the recommendations put forward by the Forum Group Mortgage Credit. Following the recent publication of the Green Paper on mortgages, the ESBG would not like to pre-empt the forthcoming debate on whether the policy measures recommended by the Forum Group are suitable and justified to achieve the objectives established by the Commission and will respond separately to the Green Paper on mortgages.

The ESBG is however clear on the principle that it is in favour of further market integration that brings concrete benefits to both consumers and lenders in the framework of the single market. At this early stage, the ESBG believes that it is essential to find a consistent EU definition on cross-border lending – as argued in the Forum Group report (Recommendation 1) - which could help further investigation of real obstacles and needs to integrate the markets.

From a consumer perspective, the ESBG believes that the consumers' potential key benefits in a single market are mainly twofold:

– Full product choice at competitive prices. Such benefits can be best achieved in a single market where a diversity of European lenders can compete offering consumers a plurality of offers.

– Meeting consumers' information requirements. These requirements are met by the Code of Conduct on Home Loans and its tailored ESIS (European Standardised Information Sheet), which was negotiated and agreed upon with consumer representatives, and which the industry believes to be the appropriate tool to ensure transparent and adequate consumer information.

While the ESBG recognises that some of the Forum Group recommendations rightly aim at improving some procedural aspects of the lending business (e.g. more transparency in the registration, more efficient and faster disclosure procedures), it should be underlined that EU binding rules harmonising mortgage credit from a consumer protection angle should not be seen as the sole possibility to further integrate mortgage markets in the EU. In line with the ESBG position on harmonisation - stated earlier in this section - targeted harmonisation should be only used as a means to further integrate mortgage markets in the EU provided that that prior cost-benefit analysis recommend to do so and only when other means have proved to be ineffective.

In addition, recent economic studies point out that national mortgage markets are broadly very efficient and highly competitive. The current fierce competition has lead to a considerate decrease of lender's margins. The high level of competition in the residential

mortgage credit market also leads to high costs for lenders to tap into foreign markets where domestic/local lenders logically benefit from their expertise in the relevant market (e.g. value of financed property, distribution channels, registration procedures, judicial procedures, etc). Moreover, ESBG feels that the Forum Group Report does not encompasses all aspects of the economics of mortgage business.

Therefore, it is indispensable for further debate that a thorough assessment of the benefits of integration is available before any decision is taken as to the usefulness of implementing any new measures. In conclusion, the ESBG would therefore welcome integration measures that pass the market test of efficiency, meaning measures that have been strictly assessed on the basis of business impact analyses measured by using such tools as proportionality tests and/or cost benefit analyses.

Codification and possible simplification of existing rules on information requirements

The Green Paper identifies codification and simplification of existing rules on information requirements as areas of possible future action. On codification and simplification in general, the ESBG has expressed its views earlier in this paper by underlying its fully support to achieve leaner, more consistent and coherent regulatory framework[47]. Moreover, while the ESBG congratulates the Commission's well-intended proposal to codify in the sense of consolidating existing acquis via a simplification and eventually a repeal of unnecessary measures, it highlights that an equal understanding and support of the same objectives from the other EU institutions (especially the Parliament and Council) is of particular importance to achieve the proposed goals. If the EC is not fully supported by the other EU institutions, there is a risk of ending with more rules (rather than less) as a result of the codification exercise.

The ESBG highly welcomes the announced initiative to codify and possibly simplify existing rules on information requirements. The area of information obligations is one where the increasing number of EU binding rules has lead to overregulation with highly questionable benefits for consumers (often confused with the sheer quantity of information they receive). This is therefore an area where the ESBG strongly advocates that less and targeted provisions (quality versus quantity) will help reducing the regulatory burden of the industry (in line with the Lisbon Agenda) and encourage consumers to take informed and good decisions.

BOX 12: ESBG proposal for codifying and simplifying pre-contractual information obligations to the benefit for the consumer

Against this background, the ESBG recommends developing common principles on pre-contractual information to ensure that consumers receive all the relevant and practical information at the right time. By establishing a uniform list of the relevant information which should apply to all EU consumer protection directives in the financial services area in the pre-contractual stage, i.e. after the advertisement stage, consumers will be assured that they receive the relevant information at the appropriate time. The uniform list should be established along the following guidelines: it should be dependent on the product (complex products require more information than simple products), dependent on the risk

[47] See ESBG position on simplifying and consolidating all relevant financial rules, Section 2 on better regulation.

for the consumer (riskier products require more information than lower risk products), dependent on the circumstances (cross-border contracts may require more information than local contracts i.e. applicable law etc.), dependent on the timing (more information required as the contract advances) and dependent on the medium used (more information can be provided in physical contact than distance). Moreover, Member States should refrain from keeping or introducing additional requirements other than the following:

- Basic information on the supplier (complete identification and contact details);
- The (final) price the consumer will pay;
- The main attributes of the product or service offered, where it is not obvious;
- Important contractual conditions such as the existence of a right of withdrawal or reflection period and the duration of the terms announced in the offer/advertisement;
- Payment methods (credit card, cash, e-money);
- Minimum fixed time period of commitment binding the consumer to the contract, if any, and conditions to give notice for cancellation;
- All relevant information should be provided in a durable medium.

Exceptions should only be foreseen for very specific products, i.e. banks should not be requested to provide the complete list of information for a revolving credit at each interval. Finally, this basic information may need to be complemented by additional binding pre-contractual information for specific, more sophisticated products.

As part of the codification initiative, the ESBG also supports the need to ensure consistency and coherence in the application of the different EU directives, particularly regarding the definition of consumer and the right of withdrawal, where currently important inconsistencies (e.g. different time periods to exercise the right of withdrawal) and wide differences in implementation (e.g. applying the definition of consumer to legal persons) exist.

BOX 13: ESBG proposal for the definition and notion of consumer

The same definition of consumer should be used at the EU and at the national level. A consumer should be defined as "*a natural person acting for purposes which can be regarded as outside his trade or profession*". While this definition is uniformly used in all EU directives, Member States have implemented it quite diversely, i.e. Spain defines also legal persons as consumers. As long as consumer protection directives address different actors in different Member States it cannot be hoped to achieve more convergence. The European legislator should furthermore base his work on the notion of the *"average"* consumer being a mature citizen, who pursues his/her activities actively and responsibly by taking his/her decisions based on the relevant information acquired beforehand[48].

[48] The ESBG recommends to follow the interpretation of the ECJ on «average consumer» according to existing ECJ decision.

BOX 14: ESBG proposal on a uniform right of withdrawal

A European right of withdrawal should be introduced uniformly throughout the EU under the following conditions:

- underlying principles to justify the existence of a right of withdrawal should exist (right of withdrawal is an exception to the general principle of pacta sunt servanda);
- a single right of withdrawal should apply to all consumer contracts with an uniform list of exemptions (e.g. contracts involving a market risk or price fluctuation such as foreign exchange, situations where the consumer is fully advised or contracts signed in presence of a notary do not justify a right of withdrawal);
- acknowledging that there is a need for a general stop/end date (unlimited period for rights of withdrawal leads to an unacceptable situation of legal incertitude for any supplier of goods and services).

Financial mediation

The Green Paper states that given developments in products and the structure of financial providers, the need for further alignment of rules on conduct of business, sales advice and disclosures should be examined. The ESBG of the view that the EC should revise the existing Insurance Mediation Directive and the provisions related to intermediaries in the Markets in Financial Instruments Directive as part of the overall revision of the acquis in the area of financial services proposed in the Green Paper and to evaluate (according to better regulation/impact assessment tests) whether there is a need or potential benefits to trigger from further EU rules on financial mediation. In the end, what the ESBG considers essential is to ensure that EU provisions on financial mediation are consistent, coherent and justified according to the Internal Market goals.

Bank accounts

The ESBG supports the view of the EPC according to which introducing legal measures aiming at creating portability of bank account numbers would not be appropriate. The European banking industry has made considerable efforts to help the EC understand the issues at stake. The subject of account number portability goes well beyond the subject of payments only. Account numbers are underlying almost any contractual relationship between a bank and its customer and are at the core of the business of banks (consider for instance that in order to obtain a mortgage credit, it is necessary to have a bank account; payment cards are tied to bank accounts; remittances also require clients to have personal bank accounts).

Furthermore, the EC has in the past signalled that they share the industry's concerns in the context of discussions on the new Legal Framework Payments and moreover has also acknowledged that the introduction of legal measures to achieve portability of account numbers would create disproportionably high costs compared to the benefits. Note for instance that in the conclusions of annex 5 of the EC consultation on the New Legal Framework (COM(2003) 718 final, 2/12/2003) the EC states that "*The balance between the practical problems which would need to be solved and the advantages which would arise for the Payment System User does not justify a portability solution. In addition, they are unlikely to bear the costs of such an operation*". The EC is therefore expected to

firmly maintain this position and to continue endorsing the position of the industry in this particular aspect.

About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of €4,345 billion (1 January 2004). It represents the interests of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG members are typically savings and *retail* banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their *region*. For decades ESBG members reinvest *responsibly* in their region and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.

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