As an introductory statement, ESBG would like to state that it strongly believes in three principles which should inspire every legislation applicable to the European banking industry, in particular in the areas mentioned below:

1. **Pluralism**: the diversity of the European banking sector's business models proved to be an asset in order to overcome the crisis in the European Union. Savings and retail banks are parts of this sector and have a strong belief in their essential role in the financing of the real economy (households and SMEs in particular).

2. **Subsidiarity**: as enshrined in the Treaty of the European Union (Article 5), it ensures that a matter ought to be handled by the smallest, lowest, or least centralised level capable of addressing that matter effectively; the organisation of the retail and savings banks follows this principle as their efficiency comes from their local roots.

3. **Proportionality (tiered regulation)**: as acknowledged by European and international legislative bodies and standard setters (e.g. the Basel Committee, in its core principles for effective banking supervision, Principle 8), the proportionality principle is an instrument that aims to achieve the right balance between the objectives pursued by legislation and the methods used to achieve them. This balance must be ensured in order to prevent the financial system and its regulatory framework from creating disproportionate obligations to banks that do not adjust to the standards of size, complexity, business model, and cross-border activity; banks that due to their low-risk business model constitute stabilising factors in the financial system.
LEVEL II FOR CAPITAL

Given that during 2014 EBA will have to work on copious level 2 measures, ESBG recommends the co-legislators to give EBA enough time to produce thorough impact assessments and to engage in adequate public consultation while preparing the technical standards; as well as to allow time between the completion of the rules and the implementation thereof so that the financial institutions can cope with the new requirements.

LEVERAGE

ESBG would welcome that the EBA and the European Commission take into consideration the amendments proposed by the Basel Committee in January 2014 for the calculation of the leverage ratio denominator. This would support a continued global level playing field and avoid placing European banking institutions at a comparative disadvantage to institutions outside the Union.

As Basel will continue to monitor banks’ leverage ratio data on a semiannual basis in order to assess whether the design and calibration of a minimum Tier 1 leverage ratio of 3% is appropriate over a full credit cycle and for different types of business models, ESBG would reiterate that leverage should be limited at a maximum of 3% and applied only on a group consolidated level; the leverage ratio should constitute only a backstop; if the leverage ratio is higher than 3%, the leverage ratio will become the main driver of banks’ solvency: this would have dangerous and unintended consequences as this tool is too simplistic to adequately govern banks’ solvency.

The Basel Committee seeks to monitor accounting standards and practices to address any differences in national accounting frameworks that are material to the definition and calculation of the leverage ratio. Accordingly, ESBG is keen to note the need for avoiding the definition of the leverage ratio from being affected by differences in accounting standards worldwide given the extension of the consolidation scope for the leverage ratio from a mere regulatory consolidation scope to an accounting consolidation scope, which is at odds with this fundamental principle.

In relation to EBA’s mandate, ESBG questions the relevance of reporting the leverage ratio in such details, and especially the qualitative information required to be disclosed - before it is stabilised in 2018 - as the risk-weighted capital ratios already provide a better indicator of an entity’s financial health. A very strict level for this ratio can have unintended consequences, forcing many institutions to increase their risk profile in order to remain profitable.

The inclusion of intragroup transactions at an entity level may penalise decentralised banking business models. We ask for the leverage ratio to be applied at consolidated level only.

During the Basel parallel run period from 1 January 2013 to 1 January 2017 it would be most helpful for entities if the EBA clearly and far in advance reported any changes to the reporting requirements. It would also assist reporting entities if changes to reporting requirements are batched and less frequent rather than requested on an ongoing basis throughout the review process.

Given a lot of entities will need to manually prepare the submissions until the templates are finalised by Basel in 2018, the lowering of the reporting frequency must be considered. By limiting flexibility for national authorities to request more frequent disclosures during this period, the less burden there will be on entities during this time of uncertainty.

From a general point of view we are concerned regarding the requirement to publicly disclose such detailed information during the monitoring period. We hope that only general information or information already disclosed is required.

Regarding the requirement to report both point-in-time and quarterly average leverage ratio we ask the EBA to require only a point-in-time figure until the leverage ratio is finalised and becomes a legal requirement in 2018 as the calculation will be subject to change during the review period.
LIQUIDITY

Broadening the definition of HQLA Level 1 and HQLA Level 2 as the current classification of assets might have significant impact on banks and the wider economy in particular for SME lending due to the reduction in credit provision. This would entail the recognition of certain assets such as certain covered bonds and asset-backed securities, corporate debt securities and certain equity. Additionally, certain national discretion should be envisaged. It should be up to the national supervisors to judge whether or not an individual domestic market is sufficiently deep and liquid.

Having a proportionate application of the liquidity rules; for instance a cap (1/3) on the additional HQLA should be included in the LCR so as to avoid further impact. Additionally, we consider that it would be good to reshape the outflow rate on retail deposits to 3% in order to take into account those guaranteed deposits in Europe.

Reducing the administrative burden for institutions in particular when it comes to reporting for smaller institutions, in particular with regards to frequency and remittance periods. The implementation of the Basel III according liquidity rules in the US that involves a differentiate treatment according to the size of the institution and exemptions for smaller than € 50 mn is a clear example.

Taking into account the diversity of business model in the European banking system when applying the liquidity standards in particular for those decentralised business models with specific liquidity management systems.

A broadened scope for Level 2 assets would be the best solution for countries with constraints on the availability of HQLA Level 1 instrument, in particular with regards to Covered bonds.

The NSFR could seriously harm a bank’s maturity transformation function and/or incentive arbitrage. therefore the ESBG does not see the necessity of this ratio being applied. The most prudent approach would be to postpone the whole timeframe of implementation.

Deposits in IPS held for liquidity purposes shall be treated as HQLA Level 1 as the regulator already requires that the institutions have immediate access to these deposits in order to provide liquidity to the IPS members if necessary.

LONG-TERM FINANCING

ESBG does not agree with the approach which consists of encouraging one model against another – capital market funding vs. bank funding as the regulation and the model to be followed should match with the specificities and the needs of each region and should not hinder bank-lending activities. Moreover, institutional investors should not be regarded as providers of long-term financing, because they do not cover the risk-taking role and are not regulated accordingly; any envisaged regulation targeting institutional investors will even further discourage long-term investment.

Partnerships between banks and institutional investors should be developed to fill the gap between available bank capital and the multi-trillion medium-term investment programmes, so as to benefit from the know-how of banks and the investment capacity of institutional investors.

Development banks can play an important role in providing support to the supply of long-term financial instruments by principal banks and house banks. They are able to offer long-term refinancing tools and can act as partners in risk sharing. However, it is paramount that national and multilateral development banks do not enter into competition with private actors.

The appropriate accounting reporting scheme as of how are investments held with a long term horizon best depicted is also a pressing subject.
The development of a harmonised framework for covered bonds has to be done in a prudent way of minimum harmonisation. Any potential framework should be composed of an analysis and comparison of different covered bonds, tools to foster the liquidity of covered bonds, and the standardising of performance reporting.

Securitisations are rated to final maturity, and not on a short term outlook basis. So since capital requirements for securitisations are based on external ratings, and the maturity aspect is already taken into account in the rating, the ESBG would argue that the maturity element is already covered for securitisation exposures; therefore the ESBG is of the opinion that securitisation can potentially play a role in the long-term financing of the European economy.

EU-savings account: We welcome the general idea of promoting the issue of savings throughout Europe. Deposits are the major source of financing. However, as far as the introduction of a standardised framework for an EU savings account is concerned we recommend undertaking a thorough impact assessment with a special emphasis on pros and cons of a possible redistribution of capital and the consultation of appropriate market participants during the process of developing such a regulatory framework. Any detrimental effects, such as distortions of competition, have to be assessed and shall be prevented.

Crowdfunding: We recommend to support the Commission ideas of raising awareness, mapping national regulatory developments, holding regulatory workshops and, subsequently, to assess whether regulatory intervention is required at EU level. However, also in the field of Crowdfunding, it is necessary to ensure that the same activities and risk are regulated in the same way. A regulatory level playing field is essential for financial stability.

**BANKING STRUCTURE REFORM**

The ESBG is in favour of not having a sweeping banking structure reform at this moment in time; it would be better to wait and see what results are given by the current legislative changes before further action is taken. Should eventually a structural reform take place it should be limited to proprietary trading activities. The separation should not apply to smaller banks which do not pose a significant risk to the system. Any eventual structure reform should respect the diversity of the European banking system.

Market making activities should not be in any case detached from the retail entity as they provide an essential service for customers; liquidity management, hedging and other operations on behalf of clients should also be allowed in the retail entity in order to serve properly the clients (in particular the SMEs) who require this full range of services. Banks that could not provide this set of services would be at a competitive disadvantage and the result would be a loss of diversity of the banking system.

The European Commission needs to clarify the provisions which, in its proposal, leave the possibility of applying further separation to national authorities. In this regard, more certainty is needed for financial institutions.

The banking structure reform may result in a reshuffle of trading activities to other jurisdictions or to the non-regulated or shadow banking activities.

National regulations which already exist are a good way forward and are viable alternatives to be thoroughly taken into consideration for further legislative developments at European level.
BENCHMARKS IN FINANCIAL INSTRUMENTS AND FINANCIAL CONTRACTS

The implementation of the Regulation should not take place in a one-size-fits-all approach and it should be applied proportionately to the size and risks posed by each benchmark and/or Administrator and the benchmark-setting process.

It should be ensured that the Regulation that is put in place does not ultimately make it so difficult to construct indices and benchmarks that consumer choice – and indeed market functionality- is impaired in the process.

Definitions related to indices and benchmarking activity used in the draft Regulation should be the same as those used by IOSCO. The definition of each benchmark must be detailed, clear and not subject to interpretation.

The cessation of a benchmark will have ramifications across the financial industry, therefore any such phasing-out or switch to an alternative benchmark should be subject of careful planning and a coordinated approach to the change process across the industry.

The continuity of existing contracts and financial instruments referenced to a particular benchmark needs to be safeguarded in order to ensure legal certainty for the parties to the contract in question as well as for the issuers. Provisions should be made for grandfathering of obligations for a given index provider.

The Regulation should not introduce any new assessment of suitability rules. The interests of consumers in this respect are already well covered under the EU Consumer Credit Directive and the Directive on credit agreements related to residential property as well as the MiFID.

REVIEW OF THE EUROPEAN SUPERVISORY AUTHORITIES

The ESAs should continue to be the ones to draft regulatory and implementing technical standards, based on clear mandates from the European institution (“Level 1”) texts and following appropriate consultation procedures within reasonable time frames in order to ensure high quality responses from the industry. The ESAs should be limited to provide opinions to the European Parliament, the Council and the Commission, and leave aside any other kind of direct regulatory activities, i.e. without or beyond their mandate.

The Commission, the Council and the European Parliament must be the only ones in charge of developing legislation, as these three are the only ones who can have a truly regulatory role.

ESMA especially should have longer consultation and implementation periods, in order that the addressees have sufficient time to gather information and form correct, complete responses.

It would be more transparent if there were detailed, clear organisational charts available for the ESAs, as it would help to clearly identify the staff member responsible for a specific topic.

And double standards, double reporting, double stress testing or general overlap of data requested should be avoided. The data held should be shared between the authorities, in order to save time and improve efficiency. This will help to restore confidence in the system. In particular, the EBA and the ECB should align their stress tests.
EFRAG FUNDING AND GOVERNANCE

EFRAG should be a strong and common European voice for financial reporting. ESBG is strongly committed to global quality accounting standards.

ESBG supports the “standard by standard” adoption procedure of IFRS.

EFRAG needs a reliable and sustainable funding since it plays a key role for the benefit of preparers and users of IFRS in Europe.

ESBG pleads for a judicious representation of the savings and retail banks in the governing bodies of EFRAG, in particular on the board. Savings and retail banks play a pivotal role in financing the real economy and they contribute a high level of expertise.

AUTOMATIC EXCHANGE OF INFORMATION

Minimise the number of systems required for multilateral global reporting to one.

Require due diligence at customer rather than account level to align with national AML legislation.

Treat new accounts for existing customers as existing accounts to avoid imposing an excessive reporting burden on financial institutions who are fully compliant with AML/KYC requirements.

Introduce reporting requirements in a staged approach, not requiring all categories to be reported from the start.

Allow a Big Bang Approach of establishing tax residency for all existing customers irrespective of which nations join Common Reporting Standard from inception.

Align the definition of capital gains with the agreed definition of FATCA and CRS as gross proceeds only. Gross proceeds are uniformly defined worldwide and would thus provide comparable and relevant information for the receiving tax jurisdiction. There is no agreed global definition for capital gains.

Align reporting template to FATCA templates to the greatest extent possible in order to minimise additional extensive IT developments.

FTT

Halt the introduction of the FTT due to the severe impacts this tax would have on the liquidity of the financial markets and the resultant implications on the financial sector’s ability to contribute to the real economy.

Exclude financial instruments that are vital for the real economy i.e. government bonds, pension funds and repos.

Remove the cascading effect caused when using a financial intermediary in order to not discourage the use of centralised counterparties. Discouraging the use of financial intermediaries is counter to previously stated objectives of the European legislators to move away from OTC trading.
Ensure that the current liquidity markets do not transform into buy and hold markets, and that market making does not cease to exist. Due to the current proposal this could happen not only in the 11 Member States, but also in other Member States due to the extensive business exchanged between participating and non-participating Member States.

CARD INTERCHANGE REGULATION

Whilst the business rules section of the Regulation proposal borrows substantially from the banking payment industry’s 2006 SEPA Cards Framework ("SCF") should, provided there is no attrition of providers, foster transparency, consumer-decision making capabilities, and competition there is no justification for bringing commercial cards (resulting from a contract between professional counterparties who are deemed to understand their dealings) in scope of the proposed Regulation. As to interchange caps, which no Court anywhere ever found anti-competitive by object, there is no ground for the Parliament to lower them below the Commission’s proposal, which should be upheld.

PAYMENT SERVICES DIRECTIVE REVISION

Whilst much of the debate has unfortunately been crystallised around a small set of technical constructions from which market models have been derived. ESBG suggests that such an approach to legislation constrains market development rather than triggers the competition called for by the initiators of the debate, without necessarily putting to rest legitimate concerns about consumer protection.

The challenge is to reconcile a number of constraints – beyond and above account holder/payer protection:

- Allowing for a competitive marketplace conducive to innovation;
- Acknowledging that buyers (payers) – provided they are appropriately informed – should be at liberty of engaging with merchants (payees) and related providers as they deem suitable;
- Acknowledging that to service such marketplace account servicing payment service providers and third party payment service providers must be at liberty to engage in bilateral or multilateral contractual relationships to provide value propositions to the market;
- Not prescribing any single technology solution for securing the communication between payer, account servicing payment service provider, and third party payment service provider;
- Recognising the regimes existing in a large number of Member States with respect to the notion of “vicarious liability”.

The following scenarios and related obligations of respectively payers, payees and third party payment service providers, and account servicing payment service providers should be considered, and incorporated into the PSD2 dispositions above (of course other, general obligations such as data protection will apply too):

1. The payer chooses a non-authorised (i.e. non-regulated, non-supervised) third party payment service provider: it is for the payer to claim redress from either the said third party payment service provider and/or the payee for any loss whether directly or indirectly related to the non-execution or wrongful execution of the intended transaction. Provided the account servicing payment service provider ascertained that the payer gave consent in accordance with Art. 57 in an express manner the said account servicing payment service provider bears no liability. The account servicing payment service provider will be allowed to charge to the payer (account holder) costs resulting from the use of such third party payment service provider.
ii. The payer chooses an authorised third party payment service provider who however has not entered into a contractual relationship with the account servicing payment service provider: the latter only is liable towards the payer for non-execution or wrongful execution of an intended transaction for those steps of the transaction which demonstrably are under its own control. The payer would have to seek redress from either the payee and/or the third party provider in every other circumstance.

iii. The payer chooses an authorised third party payment service provider with whom the account servicing payment service provider has a contractual relationship (aka: “sponsors”); in such case – provided that both the payer and the third party payment service provider complied with the procedures established and communicated by the account servicing payment service provider the latter will be liable towards the payer for non-execution or wrongful execution of an intended transaction. Neither the account servicing payment service provider nor the third party payment service provider will charge the payer for redressing the intended transaction.

DATA PROTECTION

ESBG strongly supports the defence of privacy. ESBG essentially welcomes the intention to modernise and strengthen the protection of citizens’ rights and to move towards a harmonization of data protection rules in the EU Member States. However the regulation seems to some extent to be designed for new technology. Notwithstanding the data protection challenges through social media and the internet in general it is very crucial to consider the impact of the regulation for the traditional economy.

ESBG would like to urge the legislator to take into account the following issues of particular concern:

- No limitation of consent for data processing by introducing the ambiguous element of an imbalance between the controller and the data subject.
- Processing of data within a group or within an organisation with a joint liability scheme should be readily acknowledged as lawful.
- Right to data portability should not require banks to disclose information on trade secrets and customer information. The bank secrecy should be taken into account. Customer files are business secrets with monetary benefit. Thereof data processors have an intellectual property right which must not be undermined.
- Special attention ought to be paid to scoring; credit institutions use scoring models to assess creditworthiness and to prevent fraud and money laundering. Moreover scoring models afford banks to consider responsible lending.
- The fines proposed in the regulation are completely disproportionate. The base of fees should not be the annual turnover. The model of sanctions of anti-competitive behaviour cannot be adapted to the data protection context.
- Coherence between DP, AML, and Payments legislative packages is necessary to allow obliged entities to comply with the required standards.
- Legislation must be mindful not to set additional obligations which are not proportionate with the activities carried out by already registered, supervised and regulated institutions. Legislation should enhance economic management of financial activities assuring the application of risk based approaches which compliance cost at a reasonable level and facilitates risk monitoring.
- A reasonable level of profiling is indispensable for sound treatment of data; not only for automated decisions; this can also contribute to Anti Money-Laundering.
AML

Since ever the financial institutions have been front line in the prevention of money laundering and terrorist financing, at present, the banking industry is by far the largest contributor to the detection of such offences.

ESBG welcomes the 4th AML Directive and supports a targeted harmonization especially with regards to the principle of the risk based approach.

ESBG strongly calls for:

→ Beneficial Ownership registers, ideally at EU level; if not public at least accessible free of charge by the obliged entities; this would enhance integrity of Customer Due Diligence;

→ PEP lists published; ideally at EU level (at least for intra-EU PEPs) in order for financial institutions to use it as a substantive tool to discharge their customer due diligence (CDD) obligations independently of any commercial lists.

→ A concrete list having anti money laundering measures that are equivalent to the provisions of the AMLD. This list would successfully help the implementation of the risk based approach principle among the financial institutions.

→ With regards to Data Protection, the fight against money laundering and terrorist financing needs to be recognized as a public interest, in order that processing of such data should be considered as a legitimate interest.

Recommendations and Guidelines being issued by international advisory bodies (i.e. FATF, Basel Committee) need to be aligned for coherence and consistency especially regarding compliance requirements.

FINANCIAL INCLUSION AND PAYMENT ACCOUNTS

ESBG engages in financial inclusion and consumers’ confidence in financial institutions and financial markets since the creation of the savings and retail banks.

TRANSPARENCY AND COMPARABILITY OF FEES

ESBG supports transparency and comparability of bank fees.

→ There must be neither redundancy nor conflict with other Community legislation. The Payment Services Directive which contains transparency obligations should remain the over-riding legislation defining the rights and obligations of payment service users and providers

→ The implementation of standardized terminology for payment services should avoid a negative impact on innovation and major changes of the banking services. In order to meet consumers requests the banking industry should be able to tailor specific services according to specific demand.

SWITCHING

Given the low need and demand identified at cross-border level, ESBG believes that:

→ well functioning practices such as the recent introduction of the SEPA credit transfer and SEPA direct debit as well as the uniform price regulations and the spread of online and mobile banking should be sponsored in order to meet consumer’s required needs without the need to continuously challenge the banking industry;
as a consequence, mandatory cross-border account switching services should not be implemented;

any forms of technical specifications which facilitate switching should be left to the supply side;

switches between financial institutions situated in remote areas of different MS would entail inordinate efforts.

ACCESS TO PAYMENT ACCOUNTS
One of ESBG's core concerns is financial inclusion of disadvantaged people.

In order to focus on financial inclusion of the people who need it, a clear distinction between basic and regular payment accounts will also in the future be needed;

ESBG underlines its call for equal and fair rules for all market actors (the level playing field). This might be left to MS discretion but ESBG believes that a strong political and legal signal from the EU level will help reaching the goals of the directive;

Full coherence with required compliance related to the banking sector (i.e. AML requirements) is needed when granting rights and imposing obligations;

MS should allow to subject the access to a BPA to the condition of a prior denial to a regular account as we believe that this would avoid abusive migration to a BPA (especially in those countries which have a high rate of banking inclusion) and at the same time assure a far reaching result for disadvantaged consumers;

ESBG strongly supports more initiatives for financial education, as this will dynamically boost financial inclusion.

INFORMATION DISCLOSURE AND CSR REPORTING

Savings and Retail Banks are strongly committed to transparency and to providing a reasonable set of business information to the public, in particular to customers and authorities.

Many ESBG members regularly publish CSR reports with a high level of quality information.

This policy needs to be voluntary in order to maintain flexibility and not to harm the well-functioning practice and not to jeopardise the social innovation.

Given recent legislation on information disclosure on environmental, social and employee related matters etc., ESBG members would find further mandatory disclosure demands excessive.

The 2014 complement to the Financial statements directive 2013/34 appears reasonable and doesn’t need more additions. The Commission should take this into account when reviewing the directive and producing its report by 2018. Detailed mandatory country-by-country-reporting would be counter-productive with view at the objectives of such disclosure. Also, for to be proportionate, non-financial information should not be subject to auditing procedures.

ESBG will be delighted to provide the expertise of its members to the EU Institutions and is fully prepared to engage in the dialogue with the Institutions as well as with any stakeholder in order to further enhance the flow of meaningful information and to keep reporting policies up to the state of the arts.
ESBG MEMBERS

ABOUT ESBG

ESBG brings together savings and retail banks of the European Union and European Economic Area that believe in a common identity for European policies. ESBG members support the development of a single market for Europe that adheres to the principle of subsidiarity, whereby the European Union only acts when individual Member States cannot sufficiently do so. They believe that pluralism and diversity in the European banking sector safeguard the market against shocks that arise from time to time, whether caused by internal or external forces. Members seek to defend the European social and economic model that combines economic growth with high living standards and good working conditions. To these ends, ESBG members come together to agree on and promote common positions on relevant matters of a regulatory or supervisory nature.