European Financial Services

SERVING ALL EUROPEAN CITIZENS

Responsible, sustainable retail banking
Standing for locally focused banking

ESBG helps savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 900 institutions that are driven to innovate, and aim to further unleash the promise of sustainable, locally focused and responsible 21st century banking.

656,000
EMPLOYEES

30%
OF EU BANKING WORKFORCE

26
MEMBERS
REPRESENTING SAVINGS AND RETAIL BANKS IN 21 COUNTRIES

885
SAVINGS AND RETAIL BANKS

48,900
OFFICES AND BRANCHES
Presence in Europe

Built on solid half-century of work serving savings and retail banks, ESBG promotes their interests and the crucial role they play to fuel the real economy. Those banks help Europe to integrate at a fundamental level. The strength of savings banks rests on the power of people. One in five Europeans use ESBG member banks.

150 million EUROPEANS BANKED BY ESBG MEMBERS

NEARLY 1 in 3 EUROPEANS SERVED IN THE 21 COUNTRIES WHERE ESBG BANKS ARE PRESENT

€5.3 trillion TOTAL ASSETS

18% OF TOTAL ASSETS IN COUNTRIES WHERE WE DO BUSINESS

€5.9 billion AVERAGE ASSET SIZE PER ESBG BANK

(WELL BELOW THE AVERAGE ASSET SIZE OF BANKS IN THE 21 COUNTRIES WHERE MEMBER BANKS DO BUSINESSES.)

€1.3 billion PHILANTHROPY, FOUNDATION WORK

€1 trillion CORPORATE LOANS, INCLUDING TO SMES
“The savings and retail banking story unfolds inside this handbook. It explains what is at stake for Europe.”

HELMUT SCHLEWEIS, PRESIDENT

“We hope ideas found inside help shape a sustainable European financial services structure and a strong European Union.”

CHRIS DE NOOSE, MANAGING DIRECTOR
Foreword

Europe, our home, faces challenging times: a rapidly progressing climate change and difficult hurdles for economic and social stability. We face a world turning away from multilateralism – especially by some powerful nation states – coupled with fading co-operation being replaced by greater readiness for confrontation. At the same time, rapid technological changes offer opportunities, but digital disruptions cause for many people to fear being left behind. Taken together, these fundamental forces give profound reasons for defending the values of European integration and to stabilise and develop the European Union. Only by being united we will be able to defend our European way of life.

Savings banks and retail banks play an important role in holding strong to European values. With local roots, they have always contributed to build a stable society at times of profound change. Standing for the financial, economic and social participation of all, the nearly 900 savings and retail banks work together within the European Savings and Retail Banking Group – ESBG – to provide financial services to 150 million people in the European Union. They hold more than €1 trillion in loans to feed the real economy, the lion’s share of these loans to small and medium-sized enterprises. They employ more than 650,000 skilled people in 21 countries in Europe. Savings and retail banks make a substantial contribution to EU growth, stability and prosperity by weaving into the local and regional fabric.

Together, they form a major source of finance for people, households and families, small and medium-sized enterprises, community institutions and local infrastructure. A cornerstone of a properly functioning economic engine, they ensure modern banking services serve big cities, rural areas, and everywhere in between. Doing so fuels competition throughout Europe, which benefits people and fosters more equitable living conditions that bridge the urban-rural divide. By offering a broad range of financial education, they have provided Europeans assistance for decades – especially to young people – so that they can obtain better understanding of financial issues and take advantage of opportunities in an open Europe.

Given this backdrop, ESBG member institutions have long formed an integral part of the European model of the social market economy: efficient, high-performance institutions, close to the citizen and geared towards economic and social sustainability. They demonstrate that now and have done so since they were founded 200 years ago. Their work in local communities provides a profound contribution to European policies such as in regional policy, SME policy, environmental policy and social policy. We regard ourselves as an essential part of the European economic and social model, and approach profit maximisation in a way that resists the pull to fall into the cold abyss of capital markets.

To help this model continue to thrive, the European Union has its responsibilities. It starts with strengthening banking structures that have evolved over time, such as savings, retail, private and cooperative banks. To do this – and to defend our European way of life – it must be anchored by proportionality, subsidiarity and room for diversity. By doing this, we ensure a robust retail banking sector that ultimately benefits EU citizens and the European Union.

Inside this booklet, the savings and retail banking story unfolds. Contained in it are ideas and positions crafted by ESBG on a host of pressing policy topics designed to help shape a sustainable European financial services structure and a strong European Union. Designed to help gain better understanding, it explains what is at stake, even on sometimes rather technical issues. We invite you to continue the fruitful dialogue between the ESBG and the European institutions and to seek us out on any additional information you would require.

Helmut Schleweis
President, ESBG

Chris De Noose
Managing Director, ESBG
Avant-propos

L’Europe, notre patrie, traverse une période difficile. Le dérèglement climatique s’accélère, la stabilité économique et sociale est menacée. Les nations, et notamment les plus puissantes d'entre elles, se détournent du multilatéralisme, plus promptes à la confrontation qu’à la coopération qui recule de plus en plus. Dans le même temps, les progrès technologiques rapides offrent de nouvelles perspectives, mais beaucoup de citoyens craignent de devenir les laissés-pour-compte de ces ruptures digitales. Face à l’ensemble de ces forces puissantes, défendre les valeurs de l’intégration européenne et œuvrer pour la stabilité de l’Union européenne et son développement n’a jamais été aussi vital. Ce n’est qu’en étant unis que nous pourrons défendre notre modèle social européen.

Les caisses d’épargne et les banques de détail jouent un rôle dans le maintien de valeurs européennes fortes. Profondément ancrées dans leur territoire, elles ont toujours été le pilier d’une société stable dans les moments de profonds changements. Défendant la participation financière, économique et sociale de tous, les quelque 900 caisses d’épargne et banques de détail travaillent de concert dans le cadre de l’European Savings and Retail Banking Group – ESBG – pour fournir des services financiers à 150 millions de citoyens européens. Avec plus de 1 000 milliards d’euros de prêts à leur actif, elles soutiennent l’économie réelle en finançant en priorité les petites et moyennes entreprises. Elles emploient plus de 650 000 collaborateurs qualifiés dans 21 pays d’Europe. Les caisses d’épargne et les banques de détail contribuent de manière importante à la croissance, la stabilité et la prospérité de l’Union européenne en renforçant le tissu local et régional.

Ensemble, elles constituent la principale source de financement des ménages et des particuliers, des petites et moyennes entreprises et des infrastructures locales. Pierre angulaire d’un système économique efficace, elles veillent à offrir des services bancaires dans les grandes villes, les zones rurales et partout ailleurs. La concurrence est ainsi stimulée dans toute l’Europe, ce qui profite aux citoyens et favorise des conditions de vie plus justes qui combinent les écarts entre les villes et les campagnes. En proposant un large choix de programmes d’éducation financière, elles soutiennent depuis des décennies les Européens, en particulier les jeunes, et les aident à mieux comprendre les problématiques financières et à saisir les opportunités d’une Europe ouverte.

Fortes de ces réussites, les institutions membres de l’ESBG sont les artisans de la première heure du modèle européen d’une économie sociale de marché : des institutions efficaces, hautement performantes, proches des citoyens et tournées vers la durabilité économique et sociale. Elles le prouvent encore aujourd’hui, et ce depuis leur création il y a 200 ans. Leur action au plus près des communautés locales s’avère une contribution précieuse aux politiques européennes, telles que la politique régionale, la politique des PME, la politique de l’environnement et la politique sociale. Nous nous considérons comme un acteur essentiel du modèle économique et social européen, et notre approche de la maximisation des profits nous évite de sombrer dans les profondeurs sans limites des marchés de capitaux.

Mais pour que ce modèle demeure prospère, l’Union européenne doit prendre ses responsabilités. D’abord en renforçant les structures bancaires qui ont évolué avec le temps, en tête desquelles les caisses d’épargne, les banques de détail, les banques privées et les banques coopératives. Pour y parvenir, et défendre notre modèle social européen, il y a lieu d’ancrer les principes de proportionnalité, de subsidiarité et de diversité. C’est à cette seule condition que la banque de détail restera solide, dans l’intérêt des citoyens européens et de l’Union européenne.

Vous trouverez dans cette brochure une présentation des caisses d’épargne et des banques de détail. Les idées et les positions défendues par l’ESBG y sont synthétisées autour d’un large éventail de questions stratégiques d’actualité. Elles visent à contribuer à la construction d’une structure européenne et durable des services financiers et d’une Union européenne robuste. Nous vous invitons à poursuivre le dialogue productif entre l’ESBG et les institutions européennes et à nous demander toute information complémentaire dont vous auriez besoin.
Introducción

Europa, nuestro Viejo Continente, se enfrenta a tiempos difíciles: la aceleración del cambio climático y las muchas piedras en el camino de la estabilidad social y económica. El mundo está dándole la espalda al multilateralismo, especialmente ciertas naciones poderosas, y se deteriora la voluntad de cooperación, reemplazada por una mayor propensión a la confrontación. Al mismo tiempo, los continuos cambios tecnológicos ofrecen oportunidades pero la disrupción digital hace que sean muchos los que temen quedarse en la cuneta. En conjunto, estas fuerzas fundamentales justifican la defensa de los valores de integración europea y la necesidad de estabilizar y desarrollar la Unión Europea. Únicamente si permanecemos unidos seremos capaces de defender el modo de vida europeo.

Los bancos minoristas y cajas de ahorros desempeñan un papel crucial en la pervivencia de los valores europeos. Con su arraigo local, han contribuido desde siempre a la construcción de una sociedad estable en tiempos de profundas transformaciones. Defendiendo la participación financiera, económica y social de todos, los casi novecientos bancos minoristas y cajas de ahorros trabajan juntos en el seno de la ESGB (Agrupación Europea de Cajas de Ahorros y Banca Minorista) para proporcionar servicios financieros a 150 millones de ciudadanos de la Unión Europea. Con créditos por valor de un billón de euros que irrigan la economía real, (destinados en su mayor parte a las pequeñas y medianas empresas) y con más de 650 000 empleados en 21 países europeos, los bancos minoristas y las cajas de ahorros aportan una contribución significativa al crecimiento, la estabilidad y la prosperidad europeas, y son una parte fundamental del tejido económico local y regional.

Juntos, son una de las principales fuentes de financiación de particulares, hogares y familias, de las pequeñas y medianas empresas y de las instituciones e infraestructuras locales. Son una de las piezas clave de una maquinaria económica bien engrasada, y garantizan la oferta de servicios bancarios modernos en las grandes ciudades, en las áreas rurales, y en toda localidad intermedia. Su actividad refuerza la competencia en el ámbito europeo, que beneficia a los individuos y fomenta unas condiciones de vida más equitativas, que reducen la brecha entre el entorno urbano y el rural. Con su amplia oferta de educación financiera, llevan décadas ayudando a que los europeos, y especialmente los más jóvenes, comprendan mejor las cuestiones financieras y sepan aprovechar las oportunidades de una Europa abierta.

Con todo este bagaje, las instituciones miembros de la ESGB forman parte desde hace décadas del modelo europeo de economía social de mercado: son instituciones eficientes, rentables, cercanas al ciudadano y defensoras de la sostenibilidad social y económica. Lo están demostrando hoy y llevan demostrándolo, día tras día, desde su creación hace doscientos años. Su labor a nivel local contribuye en gran medida a la correcta implantación de las políticas europeas, se trate de políticas regionales, a favor de las pymes, medioambientales o sociales. Nos consideramos una pieza esencial del modelo económico y social europeo, y nuestro enfoque de la noción de maximización de beneficios es capaz de resistir los cantos de sirena que arrastran hacia los fríos abismos de los mercados financieros.

Con el fin de que este modelo siga prosperando, la Unión Europea tiene que responsabilizarse, comenzando por reforzar las estructuras bancarias que han ido evolucionado con el tiempo, como las cajas de ahorros y los bancos minoristas, las sociedades colectivas bancarias y las cooperativas bancarias. Para ello, y para defender el modo de vida europeo, hay que apoyar la proporcionalidad, la subsidiariedad y defender la diversidad del sector. Con ello, se fortalecerá el sector de la banca minorista, lo que en última instancia beneficiará a los ciudadanos de la Unión y a la propia UE.

En este folleto, se despliega ante sus ojos la historia de las cajas de ahorros y bancos minoristas. En él exponemos las ideas y posiciones que defiende la ESGB en toda una serie de cuestiones políticas urgentes, pensadas para contribuir al diseño de una estructura europea sostenible de servicios financieros y al fortalecimiento de la Unión. Pensado para aportar una mejor comprensión en una serie de cuestiones, en él se explica lo que está en juego, incluso cuando se trata en ocasiones de cuestiones bastante técnicas. Lo invitamos a que contribuya al diálogo fructífero entre la ESBG y las instituciones europeas y a que se ponga en contacto con nosotros si necesita más información.

Helmut Schlewies Chris De Noose
Director general de la ESBG Presidente de la ESBG


Die Europäische Union muss dazu beitragen, dass dieses Modell weiterhin floriert. Es beginnt mit der Stärkung der Bankstrukturen, die sich mit der Zeit gebildet haben, etwa Sparkassen, Retail-, Privat- und Genossenschaftsbanken. Zur Verteidigung der europäischen Lebensweise muss es in Verhältnismäßigkeit, Subsidiarität und Vielfalt verankert sein. So stellen wir einen soliden Retail-Banking-Sektor sicher, der schließlich auch den Menschen in der EU und der Europäischen Union nutzt.

In dieser Broschüre wird die Geschichte der Sparkassen und Retailbanken erzählt. Sie enthält die Ideen und Stellungnahmen der ESV bezüglich vieler dringender politischer Themen, die eine nachhaltige europäische Finanzdienstleistungsstruktur und eine starke europäische Union prägen sollen. Sie erläutert, was auf dem Spiel steht, auch in Bezug auf manchmal sehr technische Fragen. Wir laden Sie ein, den erfolgreichen Dialog zwischen der ESV und den europäischen Institutionen fortzusetzen und übermitteln Ihnen auf Wunsch gerne weitere Informationen.

Helmut Schleweis
Geschäftsführer, ESV

Chris De Noose
Vorsitzender, ESV
Our member banks help prepare communities in a globalised world.
## Contents

Standing for locally focused banking .................................................. 2
Presence in Europe .................................................................................. 3
Foreword ................................................................................................ 4
Executive Summary .............................................................................. 13

**Prudent banking, specific rules** ................................................................
Basel III finalisation (or: “Basel IV”): apply standards in a proportionate way and be mindful of the global level playing field ......................................................... 29
Non-Performing Loans: stimulate the secondary market .................................. 30
Banking resolution: fine-tune the MREL and cut burdensome reporting .............. 33

**Clear information with less hassle** .............................................................
Non-financial reporting with a sense for proportion ........................................ 34
IFRS: take into account the business models .................................................. 36
Reporting initiatives: please streamline the reporting processes ....................... 38
Anti-Money Laundering (AML): Enhanced cooperation between local regulators should be the next step ................................................................. 41
Markets in Financial Instruments Directive (MiFID) II review: don’t treat bank customers like children ................................................................. 43
Packaged retail investment and insurance products (PRIIPs) review: get the performance scenarios right ................................................................. 45
Collective Redress: avoid abuse and loopholes and don’t overburden SMEs .......... 48
Distance Marketing: adapt the directive to the new digital .................................. 50

**The real economy: Banks finance SMEs, households** ................................ 55
Capital Market Union: don’t neglect bank lending .......................................... 56
Mortgage Credit Directive: simplify, reduce and clearly define foreign currency loans ................................................................. 57
Consumer Credit Directive: simplify, reduce and adapt to digital ..................... 58

**Creating an integrated, innovative and efficient European Payments Market** ........ 62
21st Century banking: digital connection ..................................................... 65
Open Data Economy: same business – same risk, same rules and supervision.......... 68
Innovation Facilitators: a level playing field for regulatory sandboxes and innovation hubs ................................................................. 69
Crypto-assets: protect the consumer .......................................................... 71
Crowdfunding: inform the investors of specific risks ....................................... 73
Artificial Intelligence (AI): a technology-neutral approach ................................ 74
Cloud: continued private-public dialogue needed to tackle challenges ahead ....... 76
Cybersecurity: more cooperation at EU-level absolutely necessary .................... 78

**Sustainable finance: breaking new ground** ............................................... 80
Taxonomy: Create investment framework that is dynamic and takes into account the specificities of savings and retail banks ........................................................................... 81
Sustainable Finance: sustainability risks and factors: legal certainty is required .... 82
Sustainable Finance: Green Bonds should be universally applicable .................. 83

**Financial education: Money Matters** ..................................................... 84
ESBG members .................................................................................... 86
What makes a savings or retail bank?

LIVING FROM THE MARGINS
Savings and retail banks take in deposits – money that people bring to the bank and credited to their account. Banks pay interest on deposits. They also charge interest on loans provided to household and businesses. The difference, or margin, between the interest paid on deposits and the interest charged on loans is. Interest rates differ based on longer maturity of loans, which creates more risk and justifies higher rates than interest paid on deposits. The Unusually low interest rate environment in Europe jeopardises this locally focused model.

SERVING EUROPEANS
HOUSEHOLDS
savings deposits, investment for things like retirement
ENTERPRISES
Mostly small and medium sized firms (SMEs). Those businesses deposit money for cash flow management
LOCAL AUTHORITIES
Deposit money for cash flow management.

HELPING EUROPE GROW SUSTAINABLY
WELL CAPITALISED
Above EU banking sector average
LOCALLY DRIVEN
50,000 branches serving communities, including remote areas. 1 in 3 people in Europe use them.
SME FOCUSED
€1 trillion in loans to real-economy firms.
DIGITALLY DRIVEN
Connect to people through online banking, mobile apps.
LOOK BEYOND PROFIT
€1.3 billion committed each year to philanthropy.

A RETAIL BANK
PAYMENTS - SAVINGS - LENDING - INVESTMENTS

BANK PAYS INTEREST ON
Current accounts →
Savings accounts →
Term deposits →
Investment products →

Customer service (front office)
Transaction processing (middle & back office)
Product management & development
Risk management (interest rate risk, credit risk, operational risks)

BANK CHARGES INTEREST
Mortgage loans →
Car loans / Personal loans →
SME / Corporate loans →
Microcredit →

TIME IS MONEY. MONEY IS TIME.
Savings and retail banks focus on transforming short-term deposits into long-term loans. This “maturity transformation” is a main source of risk. Banks create reserves to deal with maturity mismatches. Short-term deposits are redeemable immediately or in a few days. Long-term loans are back over several years, such as up to 30 years for mortgage loans.
Executive Summary

Serving citizens first

Europeans live in a world in turmoil. Digital change, a sick planet, and economic uncertainty put stress on Europe’s social fabric. The social gap widens in many countries, as well as the divide between disadvantaged rural areas and urban centres. Solutions are key to broaden inclusion and participation. The question on sustainable business models comes up.

Representing a fifth of EU banking sector by assets, locally focussed banks form the engine that drives growth and development in Europe’s cities, towns and rural areas. They form the bedrock of Europe’s social market economy, a bridge between regional economies and the outside world. They do this by helping strengthen the real economy. This requires sustained loan provision to households and SMEs – and ultimately supports local growth and development for the long-term. During market boom or economic turmoil, those banks serve local areas. They also help ensure “pluralism” within the European banking sector, critical to maintaining the stability of the financial system.

To create a future-ready Europe, there is need for a diverse banking landscape that includes savings and retail banks. ESBG members provide banking services to some 150 million Europeans, offering them wider options of products and services when choosing a bank. Coupled with proximity to people, diversity helps strengthen households, where ESBG members provide more than €1 trillion in mortgages in the EU, or some 16 per cent of all home loans. Our banking model is driven also to help build businesses and support local authorities.

CONNECTING WITH EUROPEANS

With close to 50,000 local branches, savings and retail banks connect to people face to face. Through digital channels – online and through user-friendly and safe mobile apps – they connect even more. This multi-pronged approach builds close relationships with people on the ground, to get a better grasp of their needs and provide tailor-made financial services they seek. Located in most parts of Europe, the 900 ESBG member banks oftentimes provide the last remaining physical branch presence in an area.

SUPPORTING A SINGLE MARKET, SUBSIDIARITY

Work continues to build an EU single market, an ambitious project supported by ESBG members and a cornerstone for a peaceful, prosperous and sustainable future in a united Europe. We remain convinced that the effort would succeed best when it adheres to subsidiarity, a principle enshrined in the EU treaty. It stipulates that the European Union only acts when and where its actions are more effective than those that would be taken at national, regional or local level. ESBG members could not agree more with the European Union slogan “Unity in Diversity”. European policies work best if they keep in mind the manifold benefits that diversity and pluralism provide.

POLITICAL BACKING FOR DIVERSITY

Savings and retail banks of all sizes and legal forms play an essential role in providing the diversity crucial to maintain the stability of the financial system. Among ESBG membership are shareholder-owned banks quoted on the stock exchange, public banks, traditional savings banks and cooperative banks. Preventing the concentration of economic and financial resources in the hands of the few is paramount to a financial system that serves the greatest possible number of people and businesses.

Two-thirds of ESBG members’ assets comprise loans to companies, local authorities and households.
A pluralistic and diverse banking sector across the EU, composed of banks with their own specific business models, ownership structures and governance arrangements, fuels competition, enhances overall banking system efficiency and helps the system overcome shocks. The manifold structure of the European banking sector now in place encourages banks to compete, improving their process and structures to better adapt.

A diverse banking sector fosters a European social and economic model that combines economic growth with high living standards and good working conditions. It serves best the different needs of people and enterprises.

**LOCALLY FOCUSED BANKS: THE SME FACTOR**

Locally focused banks have a big stake in making sure that Europe’s real economy – SMEs in particular – grow, employ and export. Data show savings and retail banks are some of Europe’s most important providers of SME finance, with hundreds of billions in SME loans on the books.

An SME strategy framed by the European Commission incoming president hinges on financing. Europeans look to savings and retail banks. Studies reveal that the vast majority of European SMEs prefer loans by credit institutions as the primary source for external funding. That funding helps form businesses and grow them.

**RESPONSIBLE BANKING:**

**A DOUBLE-BOTTOM LINE APPROACH**

Savings and retail banks pursue a “double bottom line” approach to banking, balancing the need for financial sustainability and a return to society.

Banks need to be profitable to be sure and many are shareholder-owned financial institutions. Beyond the €5 billion in taxes paid by ESBG members, those banks reserve a portion of annual gains for reinvestment in the local economy. Around €1.3 billion annually goes to philanthropic activities like funding for the arts, cultural programmes, sport, education and social projects that help youth, immigrants and the elderly.

The double-bottom-line approach also applies to financial education. Raising financial literacy levels fosters more entrepreneurship, and provides citizens – especially the youth – with the necessary tools to succeed in economic life and society. If Europeans crave societies that are more inclusive and citizens more empowered, then raising financial literacy levels is an essential element to getting there.

**THE PROPORTIONALITY CARD: A NEEDED PART OF EU REGULATORY FRAMEWORK**

How can the locally focused savings and retail-banking model contribute to further growth in Europe? On the policy front, financial legislation should weave in the principle of proportionality. That means rules applied to all financial institutions, taking into account a bank’s size, nature of its activities, complexity, risk profile and business model. Proportionate regulation should not be linked to size only. Less risk must lead to less bureaucratic burden for our 650,000 service-driven employees and for our clients. Different regulatory regimes for different banking models would help local and regional banks – oftentimes smaller and less risky – to compete on an equal footing with other players. Doing so would give Europeans better access to much-needed finance.
The prudential area remains a cornerstone of the proportionality debate. The Basel agreements provide a perfect example of rules designed for large, internationally active banks. Requiring huge administrative and compliance efforts, Basel rules applied to every bank in the same way will lead to a distortion of a level playing field. EU policymakers have an opportunity to change course, and end the regime that requires every bank on the continent to be compliant with the full Basel rulebook. ESBG members are well capitalised with an average CET1 ratio of 15.3 per cent, higher than the industry average in EU markets where our banks are present.

Recently, some legislation used proportionality. The latest “risk reduction measures package” included reforms of the Capital Requirements Regulation and Capital Requirements Directive, with some elements of proportionality introduced in the prudential ruleset.

More elements of proportionality should be reflected in existing and future EU banking rules. Relatedly, overabundant regulation affects the financial services workforce too. Proportionality can help boost service levels by reducing the burden faced by bank employees when complying with EU banking rules.

At international level, Basel IV rules were agreed upon several months ago. The big question now is just how will EU decision-makers transpose this agreement into EU legislation? It is imperative that EU decision-makers take into consideration the nature, scale and complexity of the activities of European credit institutions. Given that financing via credit institutions remains by far the most preferred way of external financing for EU citizens and SMEs, Europe must keep a well-functioning banking sector that fulfils its special role in people’s economic lives.

In addition, ESBG favours a break from new waves of regulatory initiatives. It is high time to evaluate the functioning and consequences of current legislation before taking any additional initiatives. One example is MiFID II, where regulation has created a cumbersome process that stifles the commercial process to the detriment of financial institutions and customers alike. Implementing new rules – and complying with them – hit smaller and less-complex institutions particularly hard.

SUSTAINABLE FINANCE

The EU Commission’s aim to create the world’s first climate-neutral continent is no small task. To get there, it requires sustainable finance. European decision-makers have rightly set the aim to channel more funds into sustainable projects. Overall, ESBG warmly welcomes this, but many questions remain unanswered. The European Green Deal is ambitious but needed if further emissions cuts are foreseen by 2030 and beyond.

Digitalisation & level-playing field

Digitalisation poses both opportunities and challenges for people and banks. The need for a deeper dialogue between policymakers and financial sector requires an open debate among them. Innovation happens quick when technological solutions flow, while new ones enter the pipeline. With so much testing and development sweeping the financial sector, all stakeholders need to anticipate challenges and find solutions for a policy framework that spurs more breakthroughs and financial technology while taking into account consumer and data protection, security and a competitive innovation market. All of that on a level-playing field for all stakeholders involved. EU policy must apply the “same business – same rules, same supervision” principle.

Policy must be especially able to address topics such as innovation facilitators, crypto-assets, AI and big data, open data economy, cloud, crowdfunding and cybersecurity. ESBG and its savings and retail banking members stand ready to play an active role in the process. They bring to the table real-world banking expertise and experience. They actively take a digital path and place investments in financial technology (FinTech) and innovation that help bring banking even closer to Europeans.
To date, the European Commission desired to create gradually a unified classification system (‘taxonomy’) on what constitutes an environmentally sustainable economic activity. That is expected to be helpful. Beyond taxonomy, making sustainable solutions attractive requires focus on giving true incentives to the real economy. Savings and retail banks, with their long-term-oriented business model, provide the financing locally to launch projects such as improving energy efficiency in the building envelope through better-insulated housing and other public and private structures.

**SUSTAINABILITY: MORE THAN “GREEN”**

Sustainability should be framed as more than “green”. Often overlooked is the social dimension to sustainability. The European Commission rightly pointed out as much. In its Action Plan on Financing Sustainable Growth, it noted that sustainability rests on environmental and social considerations alike.

Regulation around sustainability should always take into account a policy measure’s social impact. More specifically, policy must avoid creating side effects that might restrict, for example, access to financial services, or cause unwanted social effects.

**SERVING CITIZENS FIRST: THE ROAD AHEAD**

The challenge remains to address the need for sustainable finance and local growth and development. Being sustainable – and, in particular, socially committed – is not new to savings and retail banks. They stand ready to leverage their experience, knowledge and local networks to work together with policymakers to help deliver on the promise that a social market economy brings.

From now until 2050, it will be crucially important to have a policy framework that ensures a diversified banking sector, with strong locally focussed savings and retail banks, and a proportionate and well-balanced regulatory regime. When these elements are in place, Europe’s 900 savings and retail banks can help Europeans build a prosperous and sustainable future.

---

**MICROCREDITS CREATE JOBS IN SPAIN**

Spain’s MicroBank – a subsidiary of the CaixaBank – granted in 2018 some 116,000 microcredits valued at €772 million. These microcredits created 25,000 local jobs. All business was conducted at CaixaBank offices in the country.

*Source: MicroBank Annual Report 2018*
Synthèse

Servir en priorité les citoyens

Les Européens sont confrontés à une crise. Révolution digitale, planète malade et incertitude économique pèsent sur le tissu social européen. La fracture sociale se creuse dans de nombreux pays, au même titre que le clivage entre les zones rurales défavorisées et les centres urbains. Il faut trouver des solutions pour élargir l’inclusion et la participation. Se pose alors la question des modèles économiques durables.


Une Europe préparée à l’avenir a besoin d’un environnement bancaire diversifié composé de caisses d’épargne et de banques de détail. Les membres de l’ESBG proposent des services bancaires à quelque 150 millions d’Européens avec une offre de produits et de services plus vaste comparé aux autres banques. Outre la proximité avec les citoyens, la diversité bénéficie aussi aux ménages : les membres de l’ESBG financent plus de 1 000 milliards de prêts immobiliers en Europe, soit quelque 16 pour cent de l’encours total. Notre modèle bancaire a également vocation à développer les entreprises et à soutenir les collectivités locales.

À L’ÉCOUTE DES EUROPÉENS

Avec près de 50 000 succursales locales, les caisses d’épargne et banques de détail œuvrent au plus près des citoyens et sont à leur écoute. Grâce aux canaux digitaux – banque en ligne et applications mobiles intuitives et sécurisées – elles n’ont jamais été aussi accessibles. Avec cette approche multicanal, elles entretiennent des liens étroits avec les clients afin de mieux cerner leurs besoins et leur proposer les services financiers sur mesure qu’ils recherchent. Présentes dans la plupart des régions européennes, les 900 banques membres de l’ESBG constituent dans bien des cas le dernier contact physique implanté dans un territoire.

LA SUBSIDIARITÉ POUR MIEUX SOUTENIR LE MARCHÉ UNIQUE

La construction d’un marché unique européen se poursuit. Un projet ambitieux qui a tout le soutien des membres d’ESBG car il est la clé de voûte d’un avenir pacifique, prospère et durable dans une Europe unie. Nous sommes convaincus que les efforts seraient plus productifs si le principe de subsidiarité, inscrit dans le traité de l’Union européenne, était mieux observé. Il est en effet stipulé que l’Union européenne n’intervient que si son action est plus efficace au niveau communautaire qu’au niveau national, régional ou territorial. Les membres de l’ESBG ne sauraient être plus d’accord avec la devise de l’Union européenne « Unie dans la diversité ». Les politiques européennes produisent de meilleurs résultats lorsqu’elles tiennent compte des multiples avantages qu’offrent la diversité et le pluralisme.

LA DIVERSITÉ, UN ARGUMENT STRATÉGIQUE

De toutes tailles et formes juridiques, les caisses d’épargne sont essentielles au maintien de la diversité indispensable à la stabilité du système financier. L’ESBG compte parmi ses membres des banques détenues par des actionnaires, cotées en bourse, des banques publiques, des caisses d’épargne traditionnelles et des banques coopératives. La concentration des ressources économiques et financières dans les mains d’un petit nombre doit être à tout prix évitée si le système financier veut servir le plus grand nombre possible de particuliers et d’entreprises.
Un secteur bancaire européen pluraliste et diversifié, composé de banques au modèle économique, aux structures de propriété et de gouvernance qui leur sont propres, soutient la concurrence, améliore la performance globale du système bancaire et aide le système à absorber les chocs. La structure diversifiée actuellement en place dans le secteur bancaire européen incite les banques à renforcer leurs processus et structures pour mieux s’adapter.

Avec un secteur bancaire diversifié, le modèle social et économique européen est en mesure de concilier croissance économique, forts niveaux de vie et bonnes conditions de travail. Ainsi, il répond mieux aux différents besoins des citoyens et des entreprises.

**BANQUES LOCALES : LE FACTEUR PME**

Les banques locales se doivent de veiller à ce que l’économie réelle européenne, et en particulier les PME, prospèrent, créent des emplois et exportent. Les chiffres montrent que les caisses d’épargne et banques de détail comptent parmi les plus importants fournisseurs de financements aux PME en Europe, à raison de centaines de milliards de prêts octroyés.

La stratégie en faveur des PME élaborée par la présidente de la Commission européenne repose sur le financement. Les Européens se tournent vers les caisses d’épargne et les banques de détail. Les études montrent que la grande majorité des PME européennes privilégient les institutions de crédit pour leur financement extérieur. Ces financements contribuent à la création d’entreprises et à leur développement.

Les caisses d’épargne et banques de détail membres de l’ESBG possèdent une longue expérience des régions européennes, et leur proximité avec les entreprises locales leur permet d’acquérir des connaissances précieuses, de nourrir et d’entretenir des relations de confiance avec les PME. Au fil du temps, cette approche s’est révélée être une stratégie intelligente et prudente pour encourager la croissance durable et la création d’emplois dans les villes, les zones rurales et partout ailleurs. Les PME sont essentielles à l’émergence d’une économie circulaire et compétitive capable de rester une puissance exportatrice.

**BANQUE RESPONSABLE : UNE APPROCHE À DOUBLE OBJECTIF**

Les caisses d’épargne et banques de détail suivent une approche des services bancaires à « double objectif » : concilier le besoin de financement durable et de bénéfices à la société.

Les banques doivent être assurément rentables et beaucoup d’entre elles sont des institutions financières détenues par des actionnaires. Au-delà des 5 milliards d’euros d’impôt acquittés par les membres de l’ESBG, ces banques réinvestissent une part de leurs bénéfices annuels dans l’économie locale. Près de 1,3 milliard d’euros financent chaque année des activités philanthropiques comme les arts, des programmes culturels, des projets sportifs, pédagogiques et sociaux à destination des jeunes, des migrants et des personnes âgées.

L’approche à double objectif s’applique également à l’éducation financière. Rehausser les niveaux d’éducation financière encourage davantage l’esprit d’entreprise et les citoyens, en particulier les jeunes, disposent ainsi des outils nécessaires pour réussir dans la vie économique et la société. Si les Européens aspirent à une société plus inclusive et veulent rester maîtres de leur destin, il est alors indispensable de renforcer l’éducation financière pour les aider à y parvenir.

**LA CARTE DE LA PROPORTIONNALITÉ : L’ATOUT MAÎTRE DU CADRE RÈGLEMENTAIRE EUROPÉEN.**

Comment le modèle des caisses d’épargne et banques de détail locales contribue à la dynamique de croissance en Europe ?
Sur le plan politique, la législation financière devrait intégrer le principe de proportionnalité. Autrement dit, les règles devraient s’appliquer à toutes les institutions financières en tenant compte de la taille des banques, de la nature de leurs activités, de leur complexité, profil de risque et modèle économique. Une réglementation proportionnée ne devrait pas être uniquement subordonnée au critère de la taille. Une prise de risque moins importante doit entraîner moins de formalités administratives pour nos 650 000 collaborateurs orientés services et pour nos clients. Différents régimes réglementaires en fonction des divers modèles bancaires aideraient les banques locales et régionales, souvent plus petites et avec un profil risque moins prononcé, à concurrencer à armes égales les autres acteurs. Les citoyens européens pourraient ainsi mieux accéder aux financements dont ils ont le plus besoin.

L’aspect prudentiel est toujours au cœur du débat sur la proportionnalité. Les accords de Bâle sont un parfait exemple de règles élaborées pour les grandes banques internationales. Les règles de Bâle, particulièrement exigeantes en termes de tâches administratives et de conformité, si elles sont appliquées à chaque banque sans distinction, engendreront une distorsion de la concurrence loyale. Les décideurs européens ont la possibilité d’inverser la tendance et de mettre un terme à un régime qui exige que chaque banque du continent se mette en conformité avec l’ensemble des règles de Bâle. Les membres de l’ESBG sont bien capitalisés, à raison d’un ratio CET1 de 15,3 pour cent en moyenne, au-dessus de la moyenne du secteur dans les marchés européens sur lesquels nos banques sont présentes.

Dernièrement, un certain nombre de textes législatifs ont introduit de la proportionnalité. Le dernier « paquet de mesures sur la réduction des risques » visant à réformer le Règlement sur les exigences de fonds propres et la Directive sur les fonds propres réglementaires a intégré certains éléments de proportionnalité dans l’ensemble des règles prudentielles.

Les règles bancaires européennes, en place et à venir, devraient être davantage proportionnées. Par ailleurs, l’excès de réglementation n’est pas sans conséquence sur les employés dans les services financiers. La proportionnalité peut améliorer le niveau de service en réduisant le fardeau supporté par les employés des banques qui doivent respecter les règles bancaires de l’UE.

La digitalisation offre autant d’opportunités aux citoyens et aux banques qu’elle ne comporte de défis. Le besoin d’un dialogue approfondi entre les décideurs politiques et le secteur financier implique d’ouvrir le débat. L’innovation se matérialise rapidement avec l’afflux de solutions technologiques, tandis que de nouveaux acteurs pénètrent le marché. Avec autant d’expérimentations et de développements qui inondent le secteur financier, tous les acteurs doivent anticiper les défis et trouver des solutions pour un cadre stratégique qui encourage les avancées et la technologie financière tout en protégeant le consommateur et ses données, et en garantissant la sécurité et un marché de l’innovation compétitif. Et tout ceci dans des conditions de concurrence équitable pour l’ensemble des acteurs du marché. Les politiques européennes doivent appliquer le principe d’une « même activité, mêmes règles, même surveillance ».

Des domaines comme les facilitateurs d’innovation, les crypto-actifs, l’IA et le big data, l’économie de l’open data, la dématérialisation, le financement participatif ou la cybersécurité doivent pouvoir être traités par la législation européenne. L’ESBG et ses membres se tiennent prêts à jouer un rôle actif dans cette démarche. Ils apportent à la table leur expérience de l’économie réelle et leur connaissance du terrain. Ils s’engagent activement dans la digitalisation et investissent dans la technologie financière (FinTech) et l’innovation pour une banque toujours plus proche des Européens.
À l’échelle internationale, les règles de Bâle IV ont été convenues il y a plusieurs mois. Tout l’enjeu aujourd’hui est de savoir comment les décideurs européens vont transposer ces règles dans la législation européenne. Ils doivent impérativement prendre en considération la nature, l’ampleur et la complexité des activités des établissements de crédit européens. Étant donné que les prêts octroyés par ces établissements de crédit restent de loin le financement préféré des citoyens européens et des PME, l’Europe doit maintenir un secteur bancaire performant qui joue son rôle particulier dans la vie économique des gens.

L’ESBG plaide en outre pour un arrêt des nouvelles initiatives réglementaires. Il est grand temps d’évaluer le fonctionnement et les incidences de la législation en place avant de lancer de nouvelles initiatives. La directive MiFID II, par exemple, a instauré un processus lourd qui asphyxie les procédures commerciales au détriment des institutions financières comme des clients. L’introduction de nouvelles règles et la mise en conformité qui s’ensuit pénalisent plus durement les institutions plus petites et moins complexes.

FINANCEMENT DURABLE
La Commission européenne ambitionne de faire de l’Europe le premier continent au monde climatiquement neutre, une tâche d’une ampleur considérable. Pour y parvenir, elle a besoin d’un financement durable. Les décideurs européens ont fixé, à juste titre, l’objectif d’octroyer davantage de fonds aux projets durables. D’une manière générale, l’ESBG souligne cette décision, mais de nombreuses questions subsistent. Le « New Deal » écologique européen est certes ambitieux mais nécessaire si une nouvelle réduction des émissions est prévue d’ici 2030 et au-delà.

À ce jour, la Commission européenne a souhaité instaurer progressivement un système de classification harmonisé (« taxonomie ») de ce qui déﬁnit une activité économique durable du point de vue environnemental. Cet outil devrait être utile. Au-delà de cette taxonomie, pour rendre les solutions durables attractives, il faut donner à l’économie réelle de vraies incitations. Les caisses d’épargne et les banques de détail, fortes d’un modèle économique tourné vers le long terme, fournissent les financements locaux pour lancer des projets tels que l’amélioration de l’efficacité énergétique des bâtiments grâce à une meilleure isolation des logements et d’autres structures publiques et privées.

LA DURABILITÉ VA BIEN AU-DELÀ DE L’ÉCOLOGIE
Le développement durable devrait dépasser les seules considérations écologiques. La dimension sociale du développement durable est souvent occultée. La Commission européenne l’a justement observé. Dans son plan d’action pour financer la croissance durable, elle a noté à juste titre que le principe de durabilité tient autant aux enjeux environnementaux que sociaux.

La réglementation autour du développement durable devrait toujours tenir compte de l’impact social des mesures politiques. Plus précisément, les mesures envisagées doivent bannir toute incidence indésirable pouvant par exemple restreindre l’accès aux services financiers ou engendrer des effets sociaux non souhaités.

SERVIR EN PRIORITÉ LES CITOYENS : UN CHANTIER D’ENVERGURE
Il faut répondre au besoin de financement durable, de croissance et de développement des régions. Être durable, et en particulier socialement responsable, n’est pas une nouveauté pour les caisses d’épargne et les banques de détail. Elles sont prêtes à partager leur expérience, leurs connaissances et leurs réseaux locaux pour travailler avec les décideurs politiques et tenir la promesse d’une économie sociale de marché.

Nous avons jusqu’à 2050 à compter d’aujourd’hui pour élaborer un cadre stratégique qui garantisse un secteur bancaire diversifié avec des caisses d’épargne et des banques de détail locales robustes et un régime réglementaire proportionné et équilibré. Une fois ces éléments en place, les 900 caisses d’épargne et banques de détail en Europe pourront aider les citoyens à construire un avenir prospère et durable.

LE MICRO-CRÉDIT, SOURCE D’EMPLOI EN ESPAGNE.

Source: Rapport 2018 de MicroBank
Resumen ejecutivo

Al servicio de los ciudadanos ante todo

Los europeos viven en un mundo en plena transformación: el cambio digital, los peligros medioambientales y la incertidumbre económica que amenaza con desgarrar el tejido social europeo. La desigualdad social aumenta en muchos países, al igual que la brecha entre las áreas rurales desfavorecidas y los entornos urbanos. Es clave que se encuentren soluciones que amplíen la inclusión y la participación. La cuestión de los modelos de negocio sostenibles se impone.

Los bancos de ámbito local, que representan una quinta parte del sector bancario europeo por activos son la «locomotora» que impulsa el crecimiento y el desarrollo de las ciudades y de las áreas rurales europeas. Constituyen los cimientos sobre los que se levanta la economía social de mercado europea y son un puente entre las economías regionales y el entorno internacional. Consiguen este cometido al reforzar la economía real. Para ello ofrecen una provisión estable de créditos a los hogares y las pymes, y en última instancia, respaldan el crecimiento y el desarrollo a largo plazo. Estas entidades financieras ofrecen sus servicios a las economías locales independientemente del ciclo económico, y contribuyen a garantizar el «pluralismo» del sector bancario europeo, factor fundamental para el mantenimiento de la estabilidad del sistema financiero.

Para crear una Europa capaz de enfrentarse al futuro, es necesario mantener la diversidad y la heterogeneidad del ecosistema bancario, del que forman parte las cajas de ahorros y los bancos minoristas. Los miembros de la ESBG proporcionan servicios bancarios a 150 millones de ciudadanos europeos, ofreciéndoles una gama más amplia de productos y servicios donde elegir cuando buscan una entidad bancaria. Junto a su cercanía al ciudadano de a pie, la diversidad del sector minorista bancario contribuye a fortalecer a los hogares de la UE, a los que los miembros de la ESBG conceden créditos hipotecarios por valor de más de un billón de euros, aproximadamente el 16% de todos los créditos de los hogares. Nuestro modelo bancario tiene también por objetivo contribuir a la creación de empresas y a apoyar a las administraciones locales.

AL LADO DE LOS EUROPEOS

Gracias a sus casi 50 000 oficinas, las cajas de ahorros y bancos minoristas son capaces de mirar al cliente a los ojos. Gracias a los canales digitales, en línea y a través de aplicaciones seguras y fáciles de usar, todavía se acercan más a ellos. Este enfoque, con varios niveles, sirve para establecer una relación estrecha con los clientes, para comprenderlos, a ellos y sus necesidades, y ofrecerles los servicios financieros personalizados que demandan. Presentes en casi toda Europa, los novecientos miembros de la ESBG son a menudo las únicas entidades que todavía tienen una sucursal física en el territorio.

APOYO AL MERCADO ÚNICO Y SUBSIDIARIEDAD

El trabajo para construir un mercado único europeo continúa y se trata de un ambicioso proyecto al que los miembros de la ESBG prestan todo su apoyo, y de una piedra angular del futuro sostenible, próspero y en paz de una Europa unida. Estamos convencidos de que todos estos esfuerzos darán mejores resultados si se respeta el principio de subsidiariedad, principio consagrado en el tratado de la UE. Dicho principio estipula que la UE actúa únicamente cuando sus acciones son más efectivas y en los ámbitos en los que sus acciones son más efectivas que si se actuara a nivel nacional, regional o local. Los miembros de la ESBG se adhieren por completo al lema de la Unión Europea: «Unidos en la Diversidad». Las políticas europeas funcionan mejor si tienen en cuenta los muy diversos beneficios de la diversidad y el pluralismo.

APOYO POLÍTICO A LA DIVERSIDAD

Las cajas de ahorros y bancos minoristas de todo tamaño y forma jurídica desempeñan un papel crucial en proporcionar la diversidad necesaria para mantener la estabilidad del sistema financiero. Entre los miembros de la ESBG se encuentran sociedades anónimas cotizadas, bancos públicos, cajas de ahorros tradicionales y cooperativas bancarias. Evitar la concentración de los recursos económicos y financieros en manos de unos pocos es esencial para que el sistema financiero sea capaz de dar servicio al mayor número posible de personas y empresas.
La presencia en la UE de un sector bancario plural y diverso, formado por entidades bancarias con sus propios modelos de negocio, estructuras de accionariado y esquemas de gobernanza, estimula la competencia, mejora la eficiencia del conjunto del sistema bancario y contribuye a que este sea capaz de superar los shocks. La diversidad de la estructura actual del sector bancario europeo estimula la competencia entre entidades bancarias y la mejora de sus procesos y estructuras, con el fin de adaptarse mejor.

La diversidad del sector bancario fomenta un modelo social y económico europeo que aúna el crecimiento económico con elevados niveles de vida y unas buenas condiciones laborales, y da respuesta de manera óptima a las distintas necesidades de los ciudadanos.

**BANCOS DE ÁMBITO LOCAL: EL FACTOR PYME**

Los bancos de ámbito local están fuertemente implicados en garantizar que la economía real europea, en particular las pymes, crece, crea empleo y exporta. Los datos indican que son una de las más importantes fuentes de financiación de las pymes europeas, y que conceden créditos a estas por valor de cientos de miles de millones de euros.

La estrategia para las pymes de la nueva presidenta de la Comisión Europea gira en torno a la financiación. Los europeos mantienen una relación estrecha con las cajas de ahorros y los bancos minoristas. Los estudios indican que la gran mayoría de las pymes europeas optan por los préstamos de las entidades de crédito como principal fuente de financiación externa, y que esta financiación contribuye a la creación de empresas y a su crecimiento.

Las cajas de ahorros y bancos minoristas miembros de la ESBG poseen una vasta experiencia en el ámbito regional europeo, y gracias a su proximidad con las empresas locales cuentan con un saber hacer irreemplazable y son capaces de tejer y estrechar una relación empresarial basada en la confianza. Este enfoque ha demostrado a lo largo de los años que es un medio prudente e inteligente de impulsar el crecimiento sostenible en general y del mercado laboral en particular, en ciudades, en áreas rurales y en todo tipo de localidad intermedia. Las pymes desempeñan una labor fundamental en la creación de una economía circular y competitiva, con una fuerte capacidad exportadora.

**BANCA RESPONSABLE: ENFOQUE DEL BENEFICIO POR PARTIDA DOBLE**

Las cajas de ahorros y los bancos minoristas aplican un enfoque de «beneficio por partida doble» a la actividad bancaria, en el que alcanzan un equilibrio entre la necesidad de mantener la sostenibilidad financiera y la de obtener un retorno social.

La perennidad de los bancos requiere que sean rentables y muchos de ellos son sociedades anónimas, con accionistas a los que rendir cuentas. Además de los 5000 millones de euros que pagan de impuestos, los miembros de la ESBG destinan parte de sus beneficios anuales a la reinversión en la economía local. Unos 1300 millones de euros anuales se emplean en financiar proyectos artísticos, culturales, deportivos, educativos y sociales que ayudan a jóvenes, inmigrantes y personas de la tercera edad.

El enfoque del beneficio por partida doble también se aplica a la educación financiera. A mayores conocimientos financieros, mayor espíritu empresarial: la educación financiera proporciona a la ciudadanía, especialmente a los jóvenes, las herramientas que necesitan para prosperar en su vida económica y social. Si los europeos realmente desean sociedades menos excluyentes y ciudadanos mejor formados, mejorar los niveles de conocimientos financieros es ciertamente una de las claves para lograrlo.

**LA PROPORCIONALIDAD: UNA FACETA NECESARIA DEL MARCO NORMATIVO DE LA UE**

¿Cómo puede contribuir el modelo de cajas de ahorros y bancos minoristas a fortalecer el crecimiento europeo?
En lo que a políticas se refiere, la legislación financiera tiene que integrar el principio de proporcionalidad. De conformidad con dicho principio, la norma, que se aplicará a la totalidad de las instituciones financieras, debe tener en cuenta el tamaño de la entidad, la naturaleza de sus actividades, su complejidad, su perfil de riesgo y su modelo de negocio. La proporcionalidad no debe vincularse únicamente al tamaño. El hecho de que el riesgo sea menor tendría que reducir la carga burocrática que soportan nuestros 650 000 empleados y nuestros clientes. Aplicar distintos regímenes normativos a distintos modelos bancarios contribuiría a que los bancos locales y regionales, a menudo más pequeños y menos propensos al riesgo, competieran en igualdad de condiciones, y así, se lograría que los europeos tuvieran a su alcance más fácilmente la financiación que tanto necesitan.

El ámbito prudencial es una de las piedras angulares del debate sobre la proporcionalidad. Basilea constituye el perfecto ejemplo de normativa diseñada para los grandes bancos internacionales. La aplicación de la normativa de Basilea a todas y cada una de las entidades bancarias por igual, puesto que exige grandes esfuerzos administrativos y de cumplimiento, provoca una distorsión de la competencia. El legislador europeo tiene la oportunidad de cambiar de rumbo y de poner fin a la obligación de que toda entidad bancaria del Viejo Continente cumpla con la totalidad de la normativa desarrollada en Basilea. Los miembros de la ESBG cuentan con una buena capitalización, con un CT1 (capital de nivel 1 ordinario) promedio del 15,3%. Esta cifra es superior al promedio del sector bancario de los mercados de la UE, en el que los miembros están presentes. Recientemente, algunas normas han introducido la noción de proporcionalidad. El más reciente paquete de medidas de reducción del riesgo incluye enmiendas del Reglamento sobre requisitos de capital y de la Directiva sobre requisitos de capital en las que se introdujeron varios elementos de proporcionalidad en el conjunto de las normas prudenciales.

Sería aconsejable que un mayor número de elementos de proporcionalidad quedara recogido en la normativa bancaria europea actual y futura. En el mismo plano, el exceso de normativa repercute sobre las plantillas de las instituciones financieras. La proporcionalidad puede mejorar el nivel de servicio gracias a la reducción de la carga de trabajo, derivada del cumplimiento de la normativa bancaria de la UE, que soportan los empleados de banca.

La normativa de Basilea IV ya se acordó a nivel internacional hace ya varios meses. En estos momentos, la cuestión es: ¿cómo han previsto los legisladores europeos transponer estas normas a la legislación europea?

**Digitalización y competencia en igualdad de condiciones**

La digitalización plantea retos y oportunidades por igual a los ciudadanos y la banca. La necesidad de que el diálogo entre legisladores y sector financiero sea más productivo exige que exista entre ambos interlocutores un debate abierto. Las innovaciones se producen con gran rapidez cuando cristalizan las soluciones tecnológicas, mientras que otras nuevas van tomando forma. Con tantos test y novedades en todo el sector bancario, todas las partes interesadas deben anticipar los retos y encontrar las soluciones para crear un marco legislativo que fomente los avances y la tecnología financiera y al mismo tiempo, tenga en cuenta la protección de los datos y de los consumidores, la seguridad y la existencia de un mercado de la innovación competitivo. Todo ello, en un marco en el que se garantice la competencia en igualdad de condiciones. La UE tiene que respetar el principio de «misma actividad, mismos riesgos, mismas normas».

Especially, las políticas tienen que responder a cuestiones como los facilitadores de la innovación, los activos en criptodivisas, la inteligencia artificial y el big data, la economía de datos abierta, la nube, la financiación colectiva y la ciberseguridad. La ESBG y sus miembros, cajas de ahorros y bancos minoristas, están listos para desempeñar un papel activo en el proceso, aportando su vasta experiencia bancaria en el mundo real y todo su saber hacer. Avanzan decididos por la senda digital e invierten en tecnología digital (FinTech) y en innovación, para que la banca europea esté cada vez más cerca de los ciudadanos.

---

**CONTRIBUIR A QUE LOS CIUDADANOS FRANCESES DOMINEN SU FUTURO FINANCIERO**

Con el apoyo financiero del Grupo BPCE, miembro francés de la ESBG, la asociación francesa Finances & Pédagogie puso en marcha un programa en el que trabajaron con 870 colaboradores que ofrecieron educación financiera a 46 000 personas.
¿Es imperativo que tengan en cuenta la naturaleza, el tamaño y la complejidad de las actividades de las entidades de crédito europeas? Dado que la financiación a través de las instituciones de crédito es, con creces, el medio de financiación externa preferido por los ciudadanos y las pymes de la UE, Europa tiene el deber de mantener un sector bancario que funcione correctamente, para que desempeñe su especial papel en la vida económica de las personas.

Además, la ESBG defiende que se haga una pausa en la adopción de nuevas iniciativas de regulación. Ha llegado el momento de evaluar el funcionamiento y las consecuencias de la legislación actual antes de seguir adoptando nuevas normas. Un ejemplo es la directiva MiFID II, que ha creado un proceso engorroso que traba el proceso comercial en detrimento de las instituciones financieras y de sus clientes. La implementación de nuevas normas y su cumplimiento perjudica especialmente a las entidades más pequeñas y menos complejas.

FINANZAS SOSTENIBLES

La voluntad de la Comisión Europea de que el Viejo Continente sea el primero con neutralidad climática es un objetivo ambicioso, y para alcanzarlo, habrá que contar con las finanzas sostenibles. Los legisladores europeos, con toda razón, han establecido el objetivo de canalizar más fondos hacia los proyectos sostenibles. En principio, la ESBG está totalmente a favor de este principio, aunque quedan todavía muchos flecos pendientes. Este Green Deal europeo es sin duda ambicioso pero también necesario si hay que lograr nuevas reducciones de las emisiones para 2030 y más allá.

La Comisión Europea desea crear gradualmente un sistema unificado de clasificación (una «taxonomía») con el fin de fijar qué puede o debe ser calificado como actividad económica sostenible desde el punto de vista medioambiental. Esta clasificación sería de gran ayuda. Aparte del reto de la clasificación, el aumentar el atractivo de estas soluciones sostenibles requiere centrarse en ofrecer verdaderos incentivos a la economía real. Las cajas de ahorros y bancos minoristas, gracias a su modelo de negocio orientado al largo plazo, aportan localmente la financiación necesaria para lanzar proyectos como la mejora de la eficiencia energética en las viviendas e inmuebles, con el fin de mejorar el aislamiento de estos y de otras estructuras públicas y privadas.

LA SOSTENIBILIDAD NO SOLO ES LA FACETA MEDIOAMBIENTAL

En la sostenibilidad deberían considerarse otras facetas aparte de la medioambiental. La dimensión social de la sostenibilidad suele quedar desatendida y la Comisión Europea lo ha señalado con gran acierto. En su Plan de Acción de Financiación del Crecimiento Económico Sostenible señaló que el concepto de sostenibilidad recoge tanto factores medioambientales como sociales.

La normativa en materia de sostenibilidad debería tener siempre en cuenta cuál puede ser la repercusión social de una medida política. Más concretamente, las medidas adoptadas deben evitar provocar efectos secundarios que podrían restringir, por ejemplo, el acceso a los servicios financieros o causar efectos sociales indeseables.

AL SERVICIO DE LOS CIUDADANOS ANTE TODO: HOJA DE RUTA

La dificultad estriba en responder a la necesidad de contar con finanzas sostenibles y de lograr el crecimiento y el desarrollo locales. La sostenibilidad, y en particular, el compromiso social, no son ninguna novedad para las cajas de ahorros y bancos minoristas. Están listos para aportar su experiencia, sus conocimientos y sus redes locales con el fin de trabajar conjuntamente con los responsables políticos y contribuir así a lograr que se cumplan las promesas de la economía social de mercado.

Desde hoy y hasta 2050, será de suma importancia contar con un marco normativo que garantice la pervivencia de un sector bancario diversificado, en el que haya una presencia importante de cajas de ahorros y bancos minoristas de ámbito local, enmarcados por un acervo normativo proporcional y equilibrado. Gracias a ello, las novedosas cajas de ahorro y bancos minoristas europeos podrán contribuir junto a los ciudadanos europeos a la construcción de un futuro próspero y sostenible.
Zusammenfassung

Den Menschen dienen


PERSÖNLICHE BEZIEHUNGEN

Dank der rund 50'000 Zweigstellen knüpfen Sparkassen und Retailbanken in Europa persönliche Beziehungen zu ihren Kunden. Über digitale Kanäle, d.h. online und mit benutzerfreundlichen, sicheren mobilen Apps, festigen sie die Beziehungen weiter. Dieser mehrgleisige Ansatz festigt die Beziehungen zu den Menschen vor Ort. Er ermöglicht es, ihre Anforderungen besser zu verstehen und ihnen die maßgeschneiderten Finanzdienstleistungen zur Verfügung zu stellen, die sie brauchen. Die 900 ESV-Mitglieder überziehen Europa beinahe flächendeckend und sind in manchen Gebieten oft die letzte physisch anwesende Bank.

UNTERSTÜTZUNG DES GEMEINSAMEN MARKTS, SUBSIDIARITÄT


POLITISCHE UNTERSTÜTZUNG FÜR VIELFALT

Ein pluralistischer und vielfältiger Bankensektor in der EU, der Banken mit ihren jeweiligen Geschäftsmodellen, Eigentumsstrukturen und Governance-System umfasst, verstärkt den Wettbewerb, verbessert die allgemeine Effizienz des Bankwesens und hilft ihm, Krisen zu überstehen. Die aktuelle Diversität im europäischen Bankensektor fördert den Wettbewerb zwischen den Institute und hilft ihnen, ihre Prozesse und Strukturen besser an neue Gegebenheiten anzupassen.

Ein vielfältiger Bankensektor fördert ein europäisches Gesellschafts- und Wirtschaftsmodell, das Wirtschaftswachstum mit hohem Lebensstandard und guten Arbeitsbedingungen vereint. Es erfüllt die unterschiedlichen Anforderungen der Menschen und Unternehmen am besten.

**BANKEN MIT LOKALEM FOKUS: DER KMU-FAKTOR**


**VERANTWORTUNGSVOLLE BANKEN EIN ZWEIGLEISIGER ANSATZ**

Sparkassen und Retailbanken folgen einem zweigleisigen Ansatz im Bankwesen, der den Bedarf an finanzieller Nachhaltigkeit mit einer Rückgabe an die Gesellschaft vereint.

Der zweigleisige Ansatz wird auch in der Finanzbildung eingesetzt. Der Ausbau der Finanzkompetenz fördert das Unternehmertum und versorgt die Menschen, insbesondere Jugendliche, mit den notwendigen Werkzeugen, um in der Wirtschaft und der Gesellschaft erfolgreich zu bestehen. Wenn sich die Europäer nach einem Gesellschaftssystem sehn, das inklusiver ist und die Bürger stärker befähigt, dann ist eine bessere Finanzkompetenz sicherlich ein wesentliches Element, um dieses Ziel zu erreichen.

**VERHÄLTNISMASSIGKEIT: EIN WICHTIGES ELEMENT DER EU-REGULIERUNG**

Wie können die Sparkassen und Retailbanken mit lokalem Fokus weiter zum Wachstum in Europa beitragen?

Auf politischer Ebene sollten die Finanzbehörden das Prinzip der Verhältnismäßigkeit in die Regulierung einfließen lassen. Das bedeutet, dass die Vorschriften die Größe einer Bank, ihre Tätigkeit, ihre Komplexität, ihr Risikoprofil und ihr Geschäftsmodell berücksichtigen. Die Verhältnismäßigkeit darf nicht nur für die Größe gelten. Weniger Risiken müssen zu einer geringeren bürokratischen Belastung für unsere 650.000 dienstleistungsorientierten Beschäftigten und unsere Kunden führen.


In jüngster Zeit wurde das Prinzip der Verhältnismäßigkeit in einigen Gesetzen umgesetzt. Das jüngste Risikoreduktionspaket umfasst eine Überarbeitung der Kapitaladäquanzverordnung und der Eigenkapitalrichtlinie, wobei einige Elemente der Verhältnismäßigkeit in die Aufsichtsvorschriften aufgenommen wurden.

Die aktuellen und zukünftigen EU-Bankregulierungen sollten mehr Elemente der Verhältnismäßigkeit vorsehen. Überzählige Vorschriften belasten auch die Beschäftigten im Bankwesen. Die Verhältnismäßigkeit kann die Dienstleistungen verbessern, weil die Bankangestellten weniger EU-Regeln einhalten müssen.

Vor einigen Monaten wurde das Reformpaket Basel IV auf internationaler Ebene beschlossen. Nun stellt sich die Frage, wie die EU-Entscheidungsträger dieses Abkommen wohl in EU-Recht umsetzen. Art, Größe und Komplexität der Aktivitäten der europäischen Kreditinstitute sind unbedingt zu berücksichtigen. Da die Bevölkerung und die KMU in der EU Finanzierungen über Kreditinstitute bevorzugen, braucht Europa einen gut funktionierenden Banksektor, der seine besondere Rolle im europäischen Wirtschaftsleben erfüllt.

Ferner befürwortet die ESV ein Ende der neuen Regulierungswelle. Die Funktion und die Folgen der aktuellen Gesetze sind unbedingt zu bewerten, bevor zusätzliche Vorschriften erlassen werden. Ein Beispiel ist die MiFID II. Hier haben die Regulierungsbehörden einen langwierigen Prozess eingeleitet, der den Vertrieb zum Nachteil der Kreditinstitute und deren Kunden behindert. Die Umsetzung und Einhaltung der neuen Regeln belastet kleinere und weniger komplexe Einrichtungen besonders stark.

**Digitalisierung und Wettbewerb auf Augenhöhe**


NACHHALTIGE FINANZEN


NACHHALTIGKEIT: MEHR ALS „GRÜN“


DIENST AM KUNDEN: DER WEG IN DIE ZUKUNFT


Bis 2050 muss ein regulatorischer Rahmen aufgebaut werden, der einen diversifizierten Bankensektor mit starken, lokal fokussierten Sparkassen und Retailbanken und einem verhältnismäßigen und ausgewogenen Regulierungssystem sicherstellt. Wenn diese Voraussetzungen gegeben sind, können auch die 900 Sparkassen und Retailbanken in Europa ihren Beitrag zu Nachhaltigkeit und Wohlstand leisten.

MIKROKREDITE SCHAFEN ARBEITSPLÄTZE IN SPANIEN


Quelle: MicroBank Annual Report 2018

Aktionsplan für die Finanzierung des nachhaltigen Wachstums bemerke sie, dass Nachhaltigkeit ein ökologisches und soziales Anliegen sei.
Prudent banking, specific rules

Basel III completion
Non-performing loans
Banking resolution
Basel III finalisation (or: “Basel IV”):
apply standards in a proportionate way and be mindful of the global
level playing field

PROPOSED SOLUTIONS AND ACTIONS

→ Output floor: alignment with international standard

The application of the output floor in Europe should take into account the interaction with EU specific capital
buffers in order to avoid any undue capital increase compared to the international standards agreement.
Moreover, the output floor should to be applied as designed in the Basel framework, i.e. at the highest level of
consolidation to recognise diversification effect and avoid any unintended impact on specific business model.

→ New internal model approach for credit risk

We would ask for a review of internal models applications and related procedures. This could significantly
reduce the administrative efforts and huge costs on both sides – the banking industry and the regulator
(almost 50% of supervisory assessments focused on model specific issues during the last years) whereas
the reduction of scope and the new input and output floors largely modify the modelling philosophy. ESBG
proposes to replace the complex and time consuming ex-ante models applications with a new ex-post
review approach for models.

→ New standardised approach for credit risk (SARC)

• Corporate exposures: The new SARC should include a European specificity. Regarding the assignment
of unrated corporate counterparts to an “Investment Grade” classification: we propose that the EU
replaces the requirement that the corporate entity has to issue securities on a recognized exchange with
an objective criterion that is relevant for the European corporate sector.

• Specialized Lending (SL): in order to increase the risk sensitivity for SL exposures, ESBG proposes:
1) in the standardised approach: more granular risk weight levels; and 2) in the internal ratings-based
(IRB) approach: more granular loss given default (LGD) input floors and asset values haircuts.

• Commercial real estate: real estate market portfolios with historically low-defaults (commercial as well
as residential) should be treated with a more risk-sensitive approach.

• Value at origination for both Commercial real estate and Residential real estate: In ESBG’s view,
both the commercial real estate and the residential real estate exposure classes would much benefit if
an actual value approach was used instead of value at origination.

• Acquisition, development and construction (ADC) exposures: it is necessary to allow for more risk
sensitivity regarding the treatment of these exposures in EU regulation. In order to discriminate
between speculative and non-speculative exposures. Due to this it is very important that in the EU
the treatment for these exposures reflects the changes incorporated to the finalisation of Basel III,
thus allowing the assignation of a risk weight of 100% if certain conditions are met (e.g. significant amount
of pre-sale contracts).

• Equity: Basel IV intends to increase the risk weights for equity to at least 250% and up to 400% from
currently 100%. For intragroup exposures and those of members of an institutional protection scheme,
despite them being usually long-term, low risk and not-for profit, we propose to keep the current 100%
risk weight.

• Off-balance sheet items: Unconditionally Cancellable Commitments (UCC) are essential for financing
the economy. Hence, ESBG proposes to maintain the 0% credit conversion factor (CCF) to commitments
that are unconditionally cancellable upon the appropriate level of justification, including for retail clients.
New methods for market risk

- **Trading Book vs. Banking Book boundary for funds and listed equities:** There should be the possibility to keep funds and listed equities also in the banking book if the bank can prove that the positions are held without any trading intent and the mandate of the fund is fitting to the investment strategy of the banking book.

- **Treatment of equity indices in the context of the Default Risk Charge (DRC):** As the main equity indices of several European countries do not fulfil all criteria listed in Paragraph 21.31, ESBG believes that there should be the possibility of a fall back approach if the above mentioned criteria are not met and the exposure to the index in general is below a certain materiality threshold.

- **DRC requirement calculation for EU sovereigns:** Following the current Basel proposal, banks applying a default risk model will have to calculate the default charge, also for exposures to central governments and central banks of Member States denominated in the domestic currency (Art 325bmm ff, as there is no specific exemption). In ESBG’s view, this might lead to the situation, that banks applying the standardised method and banks applying a default risk model for trading book assets are treated differently in view of the calculation of the default charge.

- **Internal risk transfer of credit and equity risk from banking book to trading book:** ESBG believes that there should be a harmonized treatment of banking book hedges via internal risk transfer. The proposal for interest rate hedges (Paragraph 25.25) should be valid also for equity and credit risk hedges as this would allow external macro hedges for smaller exposures. Moreover, the open risk would be included in the internal risk transfer trading desk.

Finally, those EU special features already anchored in the CRR II/CRD V, such as the treatment of financial equity holdings, the exemption from holding capital against CVA risk on corporate derivatives exposures and the supporting factors for SMEs and infrastructure exposures, should be retained in the new framework.

**IDENTIFIED CONCERNS**

The Basel standards are designed for internationally active banks and as such they do not take into consideration the nature, scale and complexity of the activities of all individual credit institutions.

ESBG believes that:

- Those medium-sized and small banks that use the SACR will face significant administrative burden and additional cost due to the increased complexity of the new SACR

- The output floor might interfere with EU-specific capital buffers and EU-systematic application of banking regulation at individual level.

- The new SACR as basis for the calculation of the output floor is not risk sensitive enough for EU franchises.

**Why policymakers should act**

As European decision-makers have so far transposed the Basel standards to all institutions in Europe, it will be crucial for them to act carefully and with the diverse European banking sector in mind. Almost half of European banks are, in fact, locally focused and would therefore need proportionate rules in order to properly finance the economy and compete on a level playing field.
The Basel committee on banking supervision (BCBS) sets the standard for international banking prudential regulation. It is a forum for regular cooperation between the national banks and supervisory authorities from 28 countries.

On 7 December 2017, the BCBS agreed on the final elements of Basel III (this deal is commonly referred to as “Basel IV”) to be implemented by 2022.

The general outline of the deal is the following:

- **Output floor**: target set at 72.5%; transitory implementation until 2027, including a special treatment for low risk mortgages;
- **Fundamental Review of the Trading Book (FRTB)**: implementation postponed until 2022 – recalibration of some aspects (including P&L attribution and modellability of risk factors);
- **Operational Risk**: new standardised approach, removal of internal model;
- **Credit Risk**: changes to standardised approach and internal model approach (including limitation of use of models for low default portfolios, large corporates);
- **Credit Valuation Adjustment (CVA)**: revised standardised approach, removal of internal models.

The implementation within the EU is still at the very early stages. The Commission’s legislative proposal is expected in the first half of 2020.
Non-Performing Loans:

stimulate the secondary market

PROPOSED SOLUTIONS AND ACTIONS

ESBG believes that the new measures should not force banks to get rid of their NPLs. In particular, we advocate for: (i) Measures to attract a wider investor base to a secondary market for NPLs, (ii) A common legal framework to ensure the right balance between debtor protection, data secrecy and privacy, (iii) The promotion of third-party loan servicers to increase secondary loan market efficiency and (iv) The introduction of an instrument along the lines of the ‘accelerated loan security’ facility with clearly defined processes and rules. Moreover, ESBG believes that the new Accelerated Extrajudicial Collateral Enforcement (AECE) mechanism should not negatively impact the functioning of national systems for collateral enforcement.

IDENTIFIED CONCERNS

The introduction of measures to develop secondary markets for NPLs might have the unintended effect to push banks too hard to get rid of their NPLs stock. These deteriorated loans might end up being sold for a price lower than their real economic value (the so called “fire-sale”), but also this would deprive banks of the opportunity to make these loans performing again.

BACKGROUND

In March 2018, the Commission proposed an ambitious and comprehensive package of measures to tackle Non-Performing Loans (NPLs) in Europe, which included:

1. A proposal for a Directive on credit servicers, credit purchasers and recovery of collateral (also known as the Directive on NPLs secondary markets);
2. A proposal for a Regulation amending Capital Requirements Regulation (CRR) as regards minimum loss coverage for non-performing exposures (also known as the NPLs prudential backstop); and
3. A blueprint on the set-up of national asset management companies (AMCs).

The Regulation on the statutory prudential backstop has been published in the Official Journal of the EU on 25 April 2019. On the other hand, the Directive on secondary markets is going to be dealt with by the new European Parliament since an agreement in ECON couldn’t be reached.

Why policymakers should act

New MEPs and the Commission should continue their good work in making the financial sector more stable and safe, but they should also keep in mind economic growth and easing the conditions for lending to the real economy when designing new prudential requirements.
PROPOSED SOLUTIONS AND ACTIONS

The principle of proportionality plays a crucial role in the RRM package for all banks, regardless of their size and complexity.

For banks falling within the resolution regime, MREL requirements should be proportionate to the goal of the BRRD which is to ensure that taxpayers should no longer be liable to bail out troubled institutions. When calibrating MREL, resolution authorities should therefore appropriately take into account a bank’s size, business model, funding model, risk profile, SREP and stress tests results, degree of systemic relevance, the relevant resolution scenario and the preferred resolution strategy.

Correspondingly, small, less-complex institutions should be excluded from the scope of application entirely when liquidation is planned through normal insolvency proceedings (“insolvency institutions”). If the proposed resolution strategy is liquidation, there is no plan to use a bail-in tool, and hence no MREL requirement is needed. This fact should be reflected more clearly in the BRRD. The current approach of restricting the MREL requirements to the loss absorption amount and the exemption from reporting and disclosure obligations causes high administrative burden, especially for the resolution authorities, and leads to high complexity. Excluding insolvency institutions from the scope of MREL from the outset would be much more proportionate and adequate while at the same time enabling the resolution authority to dedicate more of its time to the resolution plans of institutions falling within the resolution regime.

We also call for meaningful solutions in the area of liquidity so as to avoid any unforeseen disruptions to financial stability.

IDENTIFIED CONCERNS

ESBG welcomes the efforts undertaken to make financial institutions resolvable in order to create a more resilient financial system and avoid taxpayer bail-outs. While this obviously demands for strong efforts by both small and larger financial institutions, a certain fine-tuning of requirements would allow to eliminate unnecessary burdens: currently the calibration of the minimum requirement for own funds and eligible liabilities (MREL) does not sufficiently take into account the specificities of ESBG members and certain reporting and disclosure requirements have proven challenging and burdensome.

BACKGROUND

In June 2019, the Risk Reduction Measures (RRM) package was published in the EU Official Journal. The package comprises the following pieces of legislation: (i) the Capital Requirements Regulation (CRR), (ii) the Capital Requirements Directive IV (CRD IV), (iii) the Bank Recovery and Resolution Directive (BRRD), and (iv) the Single Resolution Mechanism Regulation (SRMR). In particular, the BRRD spells out rules on the recovery and resolution of failing institutions.
Clear information with less hassle

Non-financial reporting
IFRS
Reporting initiatives
AML
MiFID II
PRIIPs
Collective redress
Distance Marketing
Non-financial reporting with a sense for proportion

PROPOSED SOLUTIONS AND ACTIONS

Companies, including the financial sector, are acknowledging the benefits that an improved non-financial reporting can have in order to improve the competitiveness of the company, CEO engagement in Environmental, social and governance (ESG) matters, accountability; the integration of externalities risk assessments, financial assessments, as well as to mitigate negative impacts on the climate while building trust with stakeholders.

Non-financial reporting has become a more and more important issue. It can improve the competitiveness of a company, the involvement of management and build trust with stakeholders. Reporting and disclosure obligations have to be effective, delivering the data really needed but in a lean and manageable way. Unnecessary administrative burden for citizens and companies should be avoided. Finally, while supportive of the implementation of the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), savings and retail banks nonetheless draw attention to the issue of data availability in relation to the proposed indicators.

From a financial perspective, non-financial disclosures from corporates enhance data availability on the market and hence set the path towards reallocation of capital flows to more sustainable economic sectors, while avoiding greenwashing. Indeed, the issue of data availability for banks is recurrent when it comes to disclose non-financial performance of their balance sheet. Another difficulty arises from the implementation of those disclosure requirements: to the diversity of business activities adds the ongoing improvement of assessment methodologies that will require time to develop, test and validate before being effective. For these reasons, non-financial reporting should remain reliable and as flexible as possible and companies should be able to choose the reporting strategy and guidelines that fits better their strategies and position, considering information related to the four main topics – environmental, social and employee matters, respect for human rights, and anti-corruption and bribery matters – and the principle of materiality.

Why policymakers should act

The European institutions have identified the need to become active. In June 2017 the European Commission published non-binding guidelines to complement the non-financial disclosure Directive and help companies disclose environmental and social information. These guidelines are not binding and companies may decide to use international, European or national guidelines according to their own characteristics or business environment. They do not extend the scope of current rules in any way. Nor do they add undue administrative burden. Additionally, in March 2018 the European Commission launched a fitness check on public reporting by companies, which aims to assess whether the EU reporting framework (financial and non-financial reporting) is still fit for purpose. Amongst others, this initiative assesses whether the EU public reporting framework is fit for new challenges (sustainability, digitalisation).

It is important that the policymakers pursue these activities with foresight. Organisations should be more involved in reporting. The question is not if it should be regulated, but rather when. Initiatives like the European Lab can also bring valuable insight to policymakers: it can give examples of corporate reporting being misused and should help to find best practices.

IDENTIFIED CONCERNS

Non-financial reporting has to change – it is not broken; but it will be unless it changes. It has gotten better at showing what is valuable for companies. Reporting is important for better business, better society, better information, better transparency and better capital markets.
BACKGROUND

Directive 2014/95/EU, which elaborates on the disclosure of non-financial and diversity information by certain large undertakings and groups, which amends the Accounting Directive, applies to all public interest companies in the EU (banks and insurance companies are thus included), and to those companies who have more than 500 employees. The Directive is high level and is principles-based. It identifies four main topics: Environmental, Social and employee matters, respect for Human Rights, and anti-corruption and bribery matters.

The European Commission Action Plan Financing Sustainable Growth requested the European Financial Reporting Advisory Group (EFRAG) in 2018 to establish a European Corporate Reporting Lab (European Lab). The objective of the European Lab is to stimulate innovations in the field of corporate reporting in Europe by identifying and sharing good practices. The European Lab deliverables are not intended to and do not have any authoritative or normative status. The European Lab will initially focus on non-financial reporting, including sustainability reporting. Preliminary projects may include climate-related disclosures in line with the recommendations of the Financial Stability Board’s Task Force on Climate-related Financial Disclosures. Other topics may be environmental accounting and, in the medium term, integrated reporting, digitalisation and innovations in various other aspects of corporate reporting. The work of the European Lab is kept separate from EFRAG’s primary role related to International Financial Reporting Standards (IFRS). EFRAG not only has a close relationship with the European Commission, but the work that EFRAG is producing reaches the Parliament and European Supervisory Authorities (ESAs) as well (e.g. European Parliament resolution of 3 October 2018 on International Financial Reporting Standards: IFRS 17 Insurance Contracts, letter to the ESAs on the indorsement process of IFRS 17).

In June 2019, the Commission also updated the non-binding guidelines on non-financial disclosure that accompany the Non-Financial Reporting Directive (Directive 2014/95/EU) in order to take into account the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).
IFRS: take into account the business models

PROPOSED SOLUTIONS AND ACTIONS

- **IBOR:** We are concerned about splitting the project in two different projects and the limited topics that have been addressed under Phase I. One important point for the industry is that any proposals should make clear their scope of application. The Board may be aware that in the case of EURIBOR we do not foresee a replacement of the benchmark, instead we are considering a change in the estimation methodology, therefore, we believe that the Boards’ relief is not applicable and the industry will keep the current status with no accounting. Moreover, the IASB should provide as soon as possible a relief on derecognition, modification gain or loss and hedge accounting in order to avoid irrelevant impact of a changes in contractual interests due to the IBOR reform.

- **Macro-hedging:** the new approach being proposed is materially different from the current accounting under IAS 39 and IFRS 9. Compared to these standards, the new approach will require significant IT developments and may lead to more volatility in OCI, given that the changes in the value of the hedging instrument will not be offset in OCI with the hedged item, and in a certain way will provide less flexibility and move away from current risk management practices carried out by entities. We would suggest the Board to consider in the future an approach or model that could be a continuity of IFRS 9 requirements for macro-hedges that better align accounting with risk management.

- **FICE:** the IASB DP has caused some concern among the banking industry, as some entities may not be convinced that the expected benefits of the IASB’s preferred approach outweigh the costs of its implementation. We would expect the Board to decide on the project direction taking into consideration the feedback received and provide a comprehensive analysis on undated or perpetual hybrid securities such as AT1 instruments and cooperative bank shares.

- **Impairment model and recycling:** ESBG is in favour of the reintroduction of recycling that should also be subject to impairment (similar to the IAS 39 model but with additional guidance to reduce subjectivity).

- **IFRS 17:** ESBG believes that the standard cannot be endorsed without a solution to the issues mentioned previously, as certain business models would not be faithfully portrayed under the current requirements of the standard. Moreover, a deferral of at least two years in the current effective date of IFRS 17 is needed to ensure a successful implementation.

The IASB decided in October 2018 to consider reopening the standard and explore potential areas of improvements to IFRS 17 and, while targeted improvements have been made, there are still significant issues not considered. The most critical topics that still have to be addressed, and that were included between the issues highlighted by the EFRAG, are the IFRS 17 requirements related to transition, to the level of aggregation and to the amortisation of the Contractual Service Margin for certain products with investment related services.

In particular:

- **Transition:** amendments are necessary in the transition requirements of the standard in order to (a) provide useful information and correctly reflect how certain business lines, as long-term saving-products, are managed, and (b) not impair comparability between contracts written before and after the date of transition.

- **Level of aggregation:** annual cohorts and portfolio aggregation by profitability requirement does not portray the business performance for long-term contracts like annuities and the way insurance contracts are managed by insurers (pricing, etc.), additionally introducing operational complexity.

- **Amortisation of the Contractual Service Margin:** current requirements do not correctly reflect the economic performance of certain products with investment-related services.

- **Reinsurance contracts** (ceded or accepted) should be eligible to the variable fee approach (VFA) in order to avoid mismatch with underlying insurance contracts.
Why policymakers should act

IFRS 9 FINANCIAL INSTRUMENTS

Multiple issues related directly or indirectly with IFRS 9 Financial Instruments have been spotted:

Within IASB work plan (standard setting process and research projects)

• IBOR (Interbank Offered Rate) – Recent market developments have brought into question the long-term viability of some IBORs even though they are used as benchmarks for a broad range of financial products and contracts.

• Macro-hedging – Volatility in accounting equity and total comprehensive income due to the cash flow hedge-based model is affected. The amount of risk is expressed as present value sensitivity or net interest income sensitivity considering relevant assets and liabilities across all time relevant buckets. The macro-hedge accounting should better reflect the risk management of financial institutions.

• FICE (Financial Instruments with Characteristics of Equity) – uncertainty and diversity in practice exists today on the classification of some instruments such as AT1 contingent convertible instruments (CoCos) and cooperative bank shares.

Within the European Commission and EFRAG work plan

• Impairment model and recycling – the European Commission ("EC") requested EFRAG to investigate the potential effects on long-term investment of the IFRS 9's requirements on accounting for equity instruments and gather views on impairment and the re-introduction of recycling for equity instruments carried at FVOCI.

• Equity instruments – as part of its Action Plan on Sustainable Finance, the EC asked EFRAG to explore potential alternative accounting treatments to ("FV") measurement for long-term investment portfolios of equity and equity-type instruments.

IFRS 17 INSURANCE CONTRACTS

Entities with insurance business face the implementation of IFRS 17 Insurance Contracts facing several issues. IFRS 17 Insurance contracts sets out the requirements an entity must apply when accounting for insurance contracts issued and reinsurance contracts entered into. The currently approved effective date of this standard is 1 January 2021, at which time it will replace IFRS 4 Insurance Contracts, a temporary standard allowing for the continued use of local accounting practices, whereby insurance contracts are accounted for differently in different jurisdictions.

In December 2018 the IASB tentatively decided to defer the date on which the standard will be first be applied, in addition to other aspects. Therefore, in the event of this decision being final, the effective date would ultimately be 1 January 2022 (with a minimum of one-year comparative information).

Implementation of IFRS 17 will standardise the accounting treatment for all insurance contracts, based on a measurement model using calculation assumptions updated at each reporting date (such as the discount rate, mortality and survival tables, and other variables). Ongoing implementation projects, however, have identified the need for more time and for improvements to the standard in order to address issues that impact on meaningful reporting and introduce significant operational challenges.
IDENTIFIED CONCERNS

The major points of concern identified by the ESBG members are the following:

- New proposed IFRS do not consider the business models that entities have in place; therefore not portraying faithfully their financial position and limiting the production of useful information.
- The need to have enough and reasonable time to implement any new requirement on a timely manner.
- Costs of implementing proposed new requirements and the likely ongoing associated costs and benefits of each new IFRS Standard.
- The possible broader economic consequences of new financial reporting requirements, particularly on financial stability.

BACKGROUND

International Financial Reporting Standards (IFRS) set common rules so that financial statements can be consistent, transparent and comparable around the world. IFRS are issued by the International Accounting Standards Board (IASB). They specify how companies must maintain and report their accounts, defining types of transactions and other events with financial impact. IFRS were established to create a common accounting language, so that businesses and their financial statements can be consistent and reliable from company to company and country to country. The current suite of IFRS consists of 25 IAS, 17 IFRS and 18 Interpretations. 144 jurisdictions require IFRS or 87% of the world. IFRS are designed to bring consistency to accounting language, practices and statements, and to help businesses and investors make educated financial analyses and decisions.
Reporting initiatives:

please streamline the reporting processes

PROPOSED SOLUTIONS AND ACTIONS

→ Harmonisation of reporting processes and requirements:

- To enhance the reporting process for European banks, the reporting initiatives BIRD and IReF have to be streamlined across Europe and shall be mandatory and applicable for all reports and reporting streams within the EU.

- ESBG sees the need for an EU-wide steering body to align current and future reporting requirements and reporting initiatives of all European authorities that have the power to require reports from the banks located in Europe. This central steering body shall also be composed of representatives and experts of the banking sector (similar to the EBA Banking Stakeholder Group). The alignment of reporting initiatives shall guarantee that newly established reporting requirements by one authority do not interfere with or deviate from those of other authorities.

- A sustainable reporting environment requires homogenous definitions and processes for all reporting requirements (in particular for supervisory, resolution and statistical reporting).

→ Enhanced transparency:

- In order to proactively support higher data quality and to enhance transparency in the supervisory review and evaluation process (SREP), ESBG requests more details on supervisory tools (such as the EGDQ Data Quality Dashboard). In ESBG’s view, the EGDQ shows a lack of details (governance, responsibilities, etc.). Therefore, ESBG is demanding more information on what is actually measured by the EGDQ Data Quality Dashboard and how the measurement is being conducted. Furthermore, ESBG requires further clarification regarding the escalation process, fines and potential capital add-ons, etc.

- Furthermore, ESBG advocates regular cost-benefit monitoring of all reporting requirements. These monitoring activities shall assess whether the reporting costs incurred by institutions are (still) proportionate with regard to the benefits delivered by the reporting requirements and data.

→ Prioritisation:

- ESBG recommends a 3-year reporting plan. Such a plan shall schedule regulatory initiative for all European authorities and provide banks with a comprehensive overview on upcoming initiatives to ensure that banks have the time, resources and budget needed to properly implement and comply with new reporting requirements. In addition, the future strategy of all the reporting initiatives needs to be validated by experts, with the expertise that is needed to evaluate prioritisation of different new requirements, the benefits resulting from the new requirements (with focus on economics and sustainability of the banking industry) as well as the realistic timeframe to introduce such new reporting requirements.

- Finally, a sustainable reporting environment requires the stabilisation of the existing reporting requirements. In this regard, ESBG urges the authorities to take into account the institutions’ efforts to achieve stability before introducing new reporting obligations.
**Why policymakers should act**

In general, ESBG appreciates the authorities’ realisation that the reporting framework could be improved and that they (mainly ECB and EBA) started to establish various data- and reporting initiatives within the different reporting areas (supervisory and statistical reporting).

We hope that the collaboration between the different authorities will be deepened and that the reporting initiatives, provided that they are properly designed, will become a reality. Expansion of the scope of authorities (e.g. with the SRB) in this collaboration would be highly welcomed. Especially small and non-complex institutions have been overwhelmed with the numerous additional reporting requirements in recent years. Many institutions, large and small, have made the experience that the same data needed to be reported more than once.

ESBG is fully supportive of working together with the EU authorities in order to make the necessary improvements in the area of reporting.

ESBG would appreciate a better-coordinated reporting environment and the establishment of a stable and quality-improved reporting across the EU.

ESBG values all reporting initiatives that lead to a reduction of burden for the banking industry and encourages European decision-makers to look more into such possibilities in the future. It would be a win-win situation for both banks and authorities if the reporting framework could be designed more efficiently.

We also invite decision-makers to always bear the principle of proportionality in mind. It should be used to identify those banks which are smaller, or non-complex, and then assess how the burden could be reduced compared with other banks. This would actually help create a level playing field.

**IDENTIFIED CONCERNS**

European banks are facing substantial reporting burden driven by the following situations in the reporting environment:

- There are more and more regulatory authorities on the European level;
- Newly introduced reporting requirements are not aligned between the authorities (e.g. SRB’s reporting for resolution plans (MREL) and ESMA’s securitisation report);
- There is no alignment between the statistical and supervisory views in terms of data management and requests;
- There is no central steering of new reporting requirements on the level of the authorities;
- Banks face tight schedules to implement new reporting requirements;
- Due to the ongoing introduction of new reporting obligations, the stabilisation of existing reports is hardly achievable;
- Heterogeneous reporting requirements lead to burdensome efforts and high costs for banks and increase the risk to create low quality or erroneous data;
- Additional reporting requirements from NCAs further contribute to the complexity in the reporting environment and are too excessive in certain cases;
- Transparency is missing in terms of responsibilities and governance by the ECB. The scope of banking groups is not well defined – e.g. group view vs local subgroup view, in case the parent institution is located in another country. Further, there is no sufficient information on how the ECB measures the data and Outcome reporting quality via the EGDQ Data Quality Dashboard. Furthermore, the outcome and usage of the data quality assessments are not known. Banks are producing and submitting reports, not knowing how and for what purpose the information is further being used for by the authorities.
European banks must generate a vast amount of data to comply with a variety of reporting obligations, ranging from financial and supervisory reporting to reporting for resolution plans (MREL) as well as statistical reporting. These reporting requirements are the results of requests for information/data of a wide range of European authorities, such as the European Banking Authority (EBA), the European Central Bank (ECB), the Single Resolution Board (SRB), national competent authorities (NCA) and other authorities/institutions with the power to require reports from the banking industry.

In order to streamline these reporting requirements and processes across Europe, some European authorities have started various data and reporting initiatives within some specific reporting areas:

- **Bank’s Integrated Reporting Dictionary (BIRD)** – a common glossary on reporting attributes by the ESCB for supervisory and statistical reports (currently voluntarily);
- **Integrated Reporting Framework (IReF)** – a common reporting data model by the ESCB for statistical reports in the Euro Area;
- **EBA’s Data Point Model** – an EU-wide data model for supervisory and resolution reporting.

Furthermore, the ECB’s Expert Group on Data Quality (EGDQ) established a Data Quality Dashboard to monitor the accuracy, completeness and punctuality of supervisory reports. It needs to be expected, that in the near future, the results of this reporting dashboard are going to have a substantial impact for the bank’s assessment in the supervisory review and evaluation process (SREP), possibly leading to additional capital requirements.
Anti-Money Laundering (AML):

Enhanced cooperation between local regulators should be the next step

PROPOSED SOLUTIONS AND ACTIONS

→ Cooperation between national supervisors and regulators

As stated above, ESBG opposes the establishing of an EU FIU in the future, as we believe it would just duplicate the work national authorities already do.

→ Cooperation between supervisors and the private sector

Finally, we suggest that the next steps on the regulation of AML and CTF should focus on boosting the dialogue between supervisors and private sector stakeholders, as the main flaws in AML and CTF mechanisms are caused by a lack of cooperation and communication between the market operators and the supervisory authority.

Why policymakers should act

ESBG fully supports preventing money laundering and curbing terrorist financing.

However, we observe, that due to a surge in diverse phenomena related to the activities of financial institutions, there is a clear need for a new approach on AML/CTF by EU institutions. We consider that novel issues arising from the use of new technologies in financial services require a proper regulation under a new approach.

For instance, we observe the following phenomena and drivers:

• The growing use of FinTech solutions in financial institutions. Due to its innovative nature, there is an increasing risk that using FinTech solutions might blur money laundering risk categories, which are not yet completely understood, and cause further significant ‘intelligence gaps’.

• The increasing use of financial/payment instruments that can be classified as ‘high-risk instruments’, such as 1) crypto-assets and virtual wallets; and 2) other assets providing a high level of anonymity (e.g., pre-paid payment cards which are issued without bearing the name of the cardholder), and lack of an appropriate legal framework.

In addition, in our members’ work, they still observe some cases where applying AML and countering terrorist financing measures is difficult. For instance:

• International transfers, whose amount is increasing hugely, from/to countries with low level of bank secrecy protection or from/to offshore jurisdictions;

• Schemes using payment accounts of newly incorporated legal entities, which simulate big investment interest in order to transfer big cash flow all at once for money laundering purposes.

IDENTIFIED ISSUES

In the EBA Amended Regulation text (i.e. new Article 81) there is a provision stating that the Commission shall “after consulting all relevant authorities and stakeholders, conduct a comprehensive assessment on the implementation, functioning and effectiveness of the specific tasks conferred to the Authority” on anti-money laundering, and carry out “a comprehensive cost and benefit analysis as well as following the objective of ensuring consistency, efficiency and effectiveness, thoroughly investigate the possibility of conferring specific tasks with regard to the prevention and countering of money-laundering and terrorist financing to an existing or new dedicated EU-wide agency.”
Such a provision suggests the intention of European regulators to create in the future a specific AML EU-wide agency (so called ‘European FIU’).

While being fully supportive of fighting money laundering and financial crime, ESBG fears that the benefits of such a proposal, if put into practice, would not exceed the burden and costs it could cause. It is therefore of utmost importance that centralisation does not come at the cost of efficiency. ESBG suggests that synergies are tapped into, to avoid additional reporting burdens and cost efficiencies on the industry, including potential duplicate procedures and overlapping of competencies and work between national and EU entities whilst ensuring that the monitoring regime is strengthened.

BACKGROUND

The EU tackled money laundering and terrorism financing with several instruments over the years.

Here we refer to the most recent initiatives adopted on these topics.

➔ 5th Anti-Money Laundering Directive

The 5th Anti-Money Laundering Directive amends the 4th Anti-Money Laundering Directive. These amendments introduce substantial improvement to better equip the Union to prevent the financial system from being used for money laundering and for funding terrorist activities.

Specifically, they will:
• Set up publicly available registers for companies, trusts and other legal arrangements;
• Enhance the powers of EU Financial Intelligence Units (FIUs) and provide them with access to broad information for the carrying out of their tasks.

A FIU is a central, national unit that is responsible for receiving and analysing information from private entities on financial transactions, which are considered to be linked to money laundering and terrorist financing.
• Limit the anonymity related to virtual currencies and wallet providers, but also for pre-paid cards;
• Broaden the criteria for the assessment of high-risk third countries and improve the safeguards for financial transactions to and from such countries;
• Set up central bank account registries or retrieval systems in all Member States.

The Directive must be transposed by Member States by 10 January 2020.

➔ The European Supervisory Authorities (ESAs) Review

The Commission launched three proposals, one relating to each ESA, in September 2017, to review the founding regulations of the ESAs (the so-called ‘ESAs Review’ package).

The Council, the Commission and the Parliament reached a provisional agreement on the ESAs review in March 2019 and the formal adoption is expected in autumn 2019.

According to the amended founding Regulation, the EBA will have a more over-arching role in AML activities. It will establish a permanent internal committee – which has been operating only de facto until now – on AML and countering terrorist financing to coordinate measures.

The ESMA and the EIOPA will have a seat each, but no voting rights, unless the decision relates to matter under their competence: in that case, the EBA final decision will be taken in agreement with the competent authority respectively.

Also, according to the amended regulation:
• EBA will be able to request national AML supervisors to investigate potential material breaches and to request them to consider targeted actions - such as sanctions;
• The EBA’s existing powers will be reinforced so that, as a last resort if national authorities do not act, the EBA will be able to address decisions directly to individual financial sector operators.
Markets in Financial Instruments Directive (MiFID) II review: 
don’t treat bank customers like children

PROPOSED SOLUTIONS AND ACTIONS

In our opinion, reforming MiFID II should be a key priority for the new European Commission. ESBG would encourage a well-thought review of MiFID II taking into account the issues stated above in order to eliminate the challenges that are counterproductive and do not increase investor protection.

ESBG would suggest to include a further category, between professional investors and retail investors, for people who are not professionals, but trade very frequently within a certain reference period. A separate, adjusted set of rules would probably make sense for both sides to facilitate the trading experience while ensuring a reasonable level of investor protection. These investors may not need dozens of pages containing the exact same information on a very regular basis (i.e. every time that they are active on the markets).

We would recommend also reviewing the requirement to record all telephone conversations taking into account the downside effects on customers experienced by ESBG members. We would suggest that clients should have the option to waive voice recording.

IDENTIFIED CONCERNS

ESBG identified several issues in the implementation of MiFID II:

• Burden of the requirements from the clients’ point of view: It appears that the administrative burden and the additional steps did not improve the investment experience. Many clients did not welcome the changes that MiFID II introduced and complained about the amount of not always helpful information they have to go through, in particular ex-ante and ex-post costs disclosures. Many clients therefore feel ‘misunderstood’ and wish for ‘opt out’ options. Clients in particular complained about the amount of not always helpful (and overlapping) information. They feel overwhelmed by the sheer amount of information and would rather have the possibility to waive parts of it. In our opinion, the reduction of administrative burdens regarding advice given on capital markets products would promote asset accumulation.

Why policymakers should act

ESBG Members have experienced that customers feel overwhelmed and confused by the excess of information. Many investors want to decide for themselves if they wish to do without certain information (such as constantly repetitive information on costs) or receive information afterwards (following telephone orders, for instance). ESBG is not fully convinced that the current set of rules gives the right incentives for retail investors to consider investing their money in the markets (and providing the real economy with financing thereby). Quite to the contrary, many clients have already (partly or complete) withdrawn from capital markets. This is a very alarming development as the investment in financial instruments is a very important aspect of private retirement arrangements (especially in times when interest rates are permanently low).

Moreover, ESBG Members are facing high cost of compliance in order to meet MiFID II and KID PRIIPs requirements. This would have a great impact on the financial advice services provided by local savings and retail banks.
• **Cost of compliance:** The enhanced MiFID II investor protection requirements have an effect on the provision of financial advice to retail investors, and in particular the most modest of them. ESBG has had reports from small savings banks that the fixed administrative costs of providing financial advice under MiFID II is making it unsustainable when the amounts invested are low. For this reason, already they are redirecting their clients towards their online platform where the costs for the intermediary are much lower as it is the only viable option. This shows that the high regulatory costs triggered by MiFID II come at the expense of clients.

• **Delay in ordering processes:** Members experienced delays in ordering processes, this is particularly worrying in the context of orders given by telephone because banks are not allowed to execute orders immediately but only after informing the customer in writing about the cost of the transaction.

• **Record of telephone conversations:** Many clients complain about the new obligation to record telephone conversations. They feel patronised and feel that the relationship of trust with their advisors has been impaired.

• **Transparency requirements:** Under MiFID II, many obligations have been exceeded to transactions with professional clients. This means that even banks have to be informed about the costs of the transaction. This information is superfluous since both groups, professional clients and eligible counterparties, are aware of the costs. The requirements should be limited to retail investors.

• **SMEs' initial public offerings (IPOs) and market animation:** The availability of Mid Cap Equity Research guarantees market animation. However, ESBG believes that MiFID II is hurting SME research. Banks need to receive specific payments for SME research and are prohibited from cross-funding their SME research via their research on larger listed corporates. Similarly brokers will have to establish a price for investment research separately from execution services. Asset management firms will also have to develop research budgets, and either pass the cost of research on to clients via pre-agreed research payment accounts or absorb the cost of research themselves. Today we see that the main losers are SME listings. Without transparency investors cannot invest in SMEs. These developments underscore the challenges that MiFID II creates and we believe that the EU should address them.

**BACKGROUND**

In June 2014, the European Commission adopted new rules revising the Markets in Financial Instruments Directive (MiFID) framework. These consist of a directive (MiFID II) and a regulation (MiFIR).

MiFID II aims to reinforce the rules on securities markets by ensuring that organised trading takes place on regulated platforms, introducing rules on algorithmic and high frequency trading, improving the transparency and oversight of financial markets including derivatives markets and enhancing investor protection. MiFID II and MiFIR became applicable as from 3 January 2018. The European Commission, taking into consideration ESMA's advice, should issue a review of the implementation of the MiFID II by March 2020.
Packaged retail investment and insurance products (PRIIPs) review:

get the performance scenarios right

PROPOSED SOLUTIONS AND ACTIONS

The review of PRIIPs should be a key priority for the new Commission. After two years of implementation, it is crucial to ensure a consumer-friendly KID and to tackle the challenges raised above. ESBG believes that the scope of the Regulation should be reviewed in order to provide legal clarity and certainty on which products fall in the scope and to exclude OTC derivatives (as in most cases they are not investment products) from the scope.

We would encourage the ESAs to review the Delegated Acts in order to improve the methodology to calculate the performance scenarios and costs as this is creating major problems. In our opinion, new changes in the Delegated acts should be subject to consumer testing, meaning that the effects that the amendments will have on consumers’ behaviour and understanding should be assessed.

BACKGROUND

The EU has adopted a Regulation on packaged retail investment and insurance products (PRIIPs) which obliges those who produce or sell investment products to provide investors with key information documents (KIDs). A typical KID will provide information on the product’s main features, as well as the risks and costs associated with the investment in that product. Information on risks aims at being as straight-forward and comparable as possible, without over-simplifying often complex products. The KID is intended to make clear to every consumer whether or not they could lose money with a certain product and how complex the product is.

The PRIIPs Regulation entered into application on 1 January 2018, following a one-year delay. As for an amendment of Art. 33, the European Commission should issue a review of the PRIIPs regulation by year-end 2019 in order to address implementation issues. In the meanwhile, ESAs is working on a review of the PRIIPs Delegated Regulation during 2019 in order to analyse potential changes in the performance scenario, in the differentiation between different types of PRIIPs and in the costs.
IDENTIFIED CONCERNS

ESBG believes that there are still open issues in the PRIIPs, in particular in the following areas:

→ Calculation of the performance scenarios in the KID:

For some products the outcomes of the calculation of the performance scenarios are absurd. KIDs that are drafted in full compliance with the legal requirements could contain information that can be false and misleading for investors. The following issues have been identified:

- Extravagant short-term results beyond 10 000%;
- Misleading procyclical anticipations: such extrapolation from historical data lead to suggest that the short-term trend will most likely continue indefinitely. On the contrary, it would be wiser to counter this naïve view and remind the non-professional client that economic cycles entail unforeseeable mean reversions.
- For some underlyings like interest rates, whose current 5Y historical trend points downwards:
  - All 3 standard scenarios show nearly identical results – which is absurd
  - The stress scenario may present the best return, which is counter intuitive
- For other underlyings like equities, whose current 5Y historical trend points upwards: all 3 standard scenarios show overoptimistic returns - which make no sense
- For some underlyings like EUR/CHF FX rate, whose current 5Y historical trend entails sudden jumps: the stress scenario present absurd returns
- The Interim Holding Period show better returns than the Recommended Holding Period.

ESBG is very concerned that this information is misleading and goes directly against the obligation to present information to the client that is fair, clear and non-misleading. This creates the situation that manufacturers are urged to provide false information in order to comply with the legal requirements.

SCOPE

The scope of the PRIIPs Regulation is not fully clear for some products (especially foreign exchange derivatives and corporate bonds), which creates legal uncertainty. ESBG also believes that OTC derivatives– or at least products that obviously hedging products – should not be within the scope of PRIIPs since in most cases they are not investment products.
Collective Redress: avoid abuse and loopholes and don’t overburden SMEs

PROPOSED SOLUTIONS AND ACTIONS

To avoid the abovementioned effects a provision could be inserted that compels qualified entities to collect the mandate of individual consumers (so called ‘mandatory opt in’) or to set a minimum number of consumers to trigger the procedure, so that entities will not be able to trigger an action if they only represent a small part of the consumers involved.

Another feasible solution is the adoption of provisions asking qualified entities to comply with certain criteria, in order to prove that they are not ‘letter box companies’ (e.g., they can be asked by a court to show that their statutory aim is consumer protection, legitimate interest must be demonstrated and viable, non-profit making character does not protect against abuse, ad hoc entities should not be allowed – i.e. entities established just for that specific proceeding - supervision should be established, no regional entities).

Other suggestions would be to stipulate that for a procedure to be initiated the effects of an infringement should still be ongoing, and in case of imminent infringements, the procedures should only be allowed when proof of serious harm can be provided. In doing so, there will be no possibility to start a procedure in case of non-material breach, avoiding spurious and abusive action.

ESBG welcomes many of the amendments the EP made to the Commission proposal, which goes in the direction ESBG pointed, and encourages the EP to keep them during triilogues, such as:

- Proof of existence in the entity of a legitimate interest to protect consumer (AM 43);
- Duty of the court to scrutiny existence and legitimacy of interest of the qualified entity in protecting consumers (AM 52);
- Public reporting obligation on qualified entities (AM 47);
- Exclusion of the possibility to create ‘ad hoc’ qualified entities (AM 49).
- Aim of the Directive not to impair national legislation (AM 34);
- Discovery process: it is now provided for both parts (AM 88,89,90);
- Probationary value of domestic and cross-border final decisions: the probationary value of final decisions has been downgraded in comparison to what was provided in the Commission proposal, as they will have value of evidence and no longer that of irrebuttable/rebuttable presumption (AM 83,84,85);
- Punitive damages: they have been prohibited (AM 64 and 67);
- Third party’s litigation funding: actions will be declared inadmissible, if the court found out that the funding by the third party would influence decisions of the entity (AM 70, 71).

On another note, ESBG found that some new provisions inserted in the EP Report are promising, but still need further fine-tuning. ESBG therefore supports that Council and EP keep the suggested view during the coming negotiations to ensure that:

- Mandatory opt in: this option is finally provided, but it is left at the discretion of MS – ESBG would like to have it compulsory (AM 60, 61);
- Providing proof of actual loss or damage in case of injunctions order: the wording is unclear and the fact that such a proof is required or not is still open to interpretation (AM 55). The wording should be rephrased in order to avoid any doubt.
Other issues ESBG cares about have not been addressed by the EP, such as:

- Limiting the possibility for the entity to initiate a procedure only if the effect of the infringement are still ongoing anymore;
- Granting competence only to Courts;
- Setting a minimum number of consumer to start the procedure
- Duty for the entities to be legally qualified and proof of stability/seriousness (e.g. sufficient HR and financial resources, years of existence not achieved;
- Forbidding regional entities.

**IDENTIFIED ISSUES**

Even though sympathetic with the initiative, ESBG fears that effective instruments of collective redress, already provided by many Member States’ legal systems can be impaired by the EU rules.

In addition, ESBG believes that the EU rules set too much of a low threshold for entities to be entitled to trigger a collective redress (and then become ‘qualified entities’, according to the new EU legal definitions), leading to abuse of the right to a collective action or to frauds or even spurious actions.

Moreover, the EU rules also introduce new procedures to be complied by traders, bringing a great risk to overburden SMEs.

The ESBG insists on the importance of having these provisions in the new EU legislation on collective redress, as they are pivotal in avoiding abuse of right, frauds and spurious actions from entities. Therefore, we invite the Council to take the following observations on board both in its General Approach and during the negotiation with the European Parliament.

**BACKGROUND**

The idea of providing an EU collective redress mechanism stems from the “New Deal for Consumers”, an initiative launched by the Commission in 2018. This initiative provided two legislative proposals, amongst which the proposal for a Directive on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (hereinafter referred to as the ‘proposal on collective redress’).

The European Parliament responsible Committee (JURI, MEP Rapporteur Didier, EPP, while IMCO was the associated Committee) already adopted its report in December 2018 and its position has been endorsed by the EP plenary in March 2019, which also voted on the negotiation mandate.

However, as of May 2019, the Council has still to adopt its General Approach, and therefore, trialogues between the institutions will start only after the Council reaches a position.

**Why policymakers should act**

ESBG believes that the proposed, new set of EU rules could undermine the effectiveness and the legitimacy of the national judicial systems when it comes to consumers’ protection, by, for instance, granting competence not solely to the courts, but also to administrative authorities, and/or by giving value of presumption to final decisions adopted by a judicial or administrative authority from a different Member State, and it believes that these provisions should be removed. In addition, ESBG members consider that the proposed, new EU rules could diminish the effectiveness of consumer protection and facilitate abuses and frauds if no additional fine-tuning is made.

Also, ESBG believes that the current proposal on collective redress is unbalanced in favour of plaintiff, putting an excessive burden on companies, especially SMEs. For instance, the Commission proposal provides a discovery process (i.e. the obligation for traders to disclose any evidence pertinent to the action that ‘lies in its control’) only in favour of plaintiff, as well as punitive damages (i.e. an amount of paid damages to the victim that exceeds the loss he/she suffered, having the only aim to ‘punish’ traders’). To enable a fair and well-balanced regulatory framework, such provisions should be removed.
Distance Marketing:

adapt the directive to the new digital

PROPOSED SOLUTIONS AND ACTIONS

ESBG believes that providing simple and shorter information to consumers will correspond more with the clients’ expectations and will have a positive effect on their well informed decision. Special attention needs to be paid to the information to be provided to consumers before entering into an agreement. We believe that it is necessary to assess how much detailed information is required and how it can best be provided to consumers in order to ensure that they are well protected.

→ Simplification of information

The DMFSD requires service providers to give excessively detailed information to the consumer prior to entering an agreement. Consumers often ignore information which is too complex or difficult to remember and there is evidence that simpler information with fewer figures is much more effective at landing critical messages.

→ Reduction of information

Regarding the pre-contractual information, it is important to focus on diminishing the number of pre-contractual documents, which service providers are obliged to serve to consumers in any case. Mobile devices can only display a limited amount of information in a clear and comprehensive way.

→ The way the information is provided and right of withdrawal

ESBG believes that detailed contractual terms and conditions and the information referred to in Article 3(1) and Article 4 from the Directive should be provided to the consumer on paper/another durable medium after concluding the contract (as stated in Art. 5, para. 2). Even though the consumer might not have had the possibility to read all of the relevant information, they would still be protected under the right of withdrawal.

The right of withdrawal is an instrument for the consumer’s protection and when it is granted to the consumer it should diminish some of the requirements for the service providers, especially in the field of the pre-contractual information that needs to be provided to consumers. If the amount of information is not diminished, there is not a substantial meaning of the right of withdrawal.

→ Coherence with other pieces of legislation

The provisions of the Directive are not entirely coherent with the Consumer Credit Directive, the Mortgage Credit Directive, the Payment Services Directive, the Insurance Distribution Directive, the Markets in Financial Instruments Directive, the Packaged Retail Investment and Insurance Products and Services Directive – about the information due before signing the agreement.


In order to achieve a coherent and easy to apply legislation in the matter of distance marketing of financial services, we would like to stress on the regulatory approach – it would be very useful if the Directive includes only the specific requirements for the distance marketing of financial services and if there is a specific product legislation, the Directive refers to the applicable parts of this specific legislation instead of repeating them.

→ Goldplating

The tendency of Member States’ goldplating practices, as observed with the DMFSD, adds costs and limits the effectiveness of the EU legislation in building the single market. The European Commission should ensure a strict implementation of this Directive, which will give consumers better visibility on their level of protection in Europe.
Why policymakers should act

The current DMFD is 17 years old and there have been many developments in the banking sector since then. It is important to update the text and take into account:

- new market players;
- digitalisation - financial services for consumers are nowadays presented, proposed and used in a very different business environment where technologies have a major role;
- consumers want to receive clear and manageable information in a short time;
- it is important not to overburden the consumers with information.
- the right of withdrawal is an instrument for the consumers protection and when it is granted to the consumer it should diminish some of the requirements for the service providers, especially in the field of the pre-contractual information that needs to be provided;
- other EU texts which have been implemented since the financial crisis and should be consistent with the Directive. It should also state which of the requirements of the specific legislation (such as CCD, MCD, PSD 2 etc.) should be kept when distance marketing is executed.

The regulation should also avoid using the references to “vulnerable consumers”. The ECJ literature generally addresses an “average consumer who is reasonably well-informed”. To ensure legal coherence, the Directive should be grounded on the “average consumer” and not on the “vulnerable consumer”.

IDENTIFIED CONCERNS

Some ESBG members believe that the revision of the DMFSD is both important and necessary, as it questions the efficiency of its provisions that aim at consumer protection, compromises the service itself and contradicts one of the basic principles of the distance marketing of financial services – that the service should be easy, accessible and time saving. Nevertheless this does not mean that the way distance marketing should be done should overburden the service providers.

The Directive did not anticipate that technological disruption and new digital means have brought a diverse set of innovative distribution channels. This is the main reason why some ESBG members believe that the DMFSD should be reviewed in order to adapt the legislation to the new technology and distribution channels that have emerged from the new digital context. It should also be applied to regulation and supervision on marketing, advertising and risk reporting to the services provided by new operators as those applicable to financial institutions, when rendering the same services because the purpose thereof is to protect consumers and, therefore, they must not discriminate based on who provides/offers the product or service.

ESBG is also keen to comment on some of the issues raised in the behavioural study on the digitalisation of the marketing and distance selling of retail financial services. We do not agree with attitude surveys and research suggesting that personalisation and targeting tend to be negatively perceived by consumers. Current marketing practices allow customers to receive information about unknown products. These practices must fulfil with the relevant legislation (GDPR and e-privacy) and additionally it is important to underline that the consumers always have the right to request stop receiving this advertisement information. In particular, some ESBG members are of the opinion that the format requirements for standardising product-specific legislation is a step too far and that the obligation for clear and intelligible information in product specific regulation is already sufficient. In addition, using regulation to slow down the purchasing process for financial products and services would reduce the benefit of banks’ investments for attractive and competitive customer experiences and would lead to a deterioration in the customer experience of all customers in response to possibly excessive behaviour of a minority.
BACKGROUND

The development of a deeper and fairer single market is one of the European Commission’s key priorities. As part of this objective, the European Commission is working to help consumers to access good quality financial services offered outside their home Member State by harmonising consumer protection rules governing distance marketing. The Distance Marketing of Financial Services Directive (DMFSD) sets out what information a consumer should receive about a financial service and its provider before concluding a distance contract. For certain financial services, it also gives the consumer a 14-day right of withdrawal. In addition, the DMFSD bans services and communications from suppliers that a consumer has neither solicited nor consented to receive.

Since its adoption in 2002, several pieces of product-specific EU legislation have been adopted in the areas of consumer credit, mortgages, payment accounts, payment services, insurance products and investment products. These acts specify, for instance, the type of information a consumer should receive about a product and its provider. The legal framework also includes general consumer protection rules on unfair commercial practices and unfair contract terms, as well as rules on the ecommerce framework, data protection and e-privacy.
The real economy: Banks finance SMEs, households

Capital Markets Union
Mortgage Credit Directive
Consumer Credit Directive
Capital Market Union: 
don’t neglect bank lending

PROPOSED SOLUTIONS AND ACTIONS
ESBG believes that a new European Commission plan for a ‘CMU 2.0’ should be used to identify and remove burdens presented by bureaucracy with the objectives of ensuring capital markets stability as well as providing capital markets access to all investors. Since the CMU aims at unlocking capital around Europe, increase in the participation of retail investors in EU capital markets is necessary. Therefore, in our opinion, the ‘CMU 2.0’ should be focused on:

• Restoring investor trust and raising confidence in capital markets.
• Increasing financial education. Well-informed investors will make responsible investment decisions from the range of available capital markets products that are more adequately suited for their needs.
• Widening access to equities. Broad sections of the population should have access to equities. This has to be duly taken into account in regulatory requirements, especially with regard to MiFID and PRIIPs.

As stated above, ESBG is convinced that it would not be in the interest of the European economy, taking into consideration that is strongly based on SME structures, to favour funding from capital markets over traditional bank lending. ESBG believes that the European Commission should also ensure the proper functioning of the lending market. Pluralism and diversity in the European banking sector should be preserved in order to have a safer financial market.

IDENTIFIED CONCERNS

ESBG supports the European Commission’s plan to create a CMU. However, the success of the CMU is not conceivable without a properly functioning lending market. SMEs rely significantly on bank loans for funding. 70% of outstanding SME external funding in Europe comes from banks, and evidence shows that bank lending remains the favourite source of SME financing for the majority of SMEs. CMU is a supplementary vehicle, not a primary path to support SME financing.

BACKGROUND

As part of the Juncker Commission’s priority to boost jobs, growth and investment across the EU, the Capital Markets Union (CMU) has been a key pillar of the Investment Plan. The CMU aims to unlock more investment for all companies, including small and medium enterprises (SMEs), to attract more investment into the EU from the rest of the world and to make the financial system more stable by opening up a wider range of funding sources. In 2015, the European Commission adopted an action plan setting out 20 key measures to achieve a single market for capital in Europe proposing a mix of mix of regulatory and non-regulatory reforms. This was followed by a mid-term review in 2017 where the Commission reflected on the achievements so far and developed new priorities. Finding the best way to finance the real economy remains a high priority for EU policymakers for the next years. Some more work is also expected on the CMU project, as the results, so far, have not been as remarkable as hoped.
Mortgage Credit Directive: simplify, reduce and clearly define foreign currency loans

PROPOSED SOLUTIONS AND ACTIONS

ESBG believes that providing simple and shorter information to consumers will correspond more on the client’s expectations and will have a positive effect on their well informed decision.

→ Simplification of information

MCD, like CCD, requires creditors to give excessively detailed information to the consumer prior to entering a consumer credit agreement. Nonetheless, consumers ignore information which is too complex or difficult to remember and there is evidence that simpler information with fewer figures is much more effective at landing critical messages. That information may refer to information that only reflects the specifics of the product and meets with client’s expectations for short and clear information – for example – the repayment periods, the amount of the repayment instalments and the applicable interest rate.

→ Reduction of information

Regarding the pre-contractual information, it is important to focus on diminishing the number of pre-contractual documents, which banks are obliged to serve to consumers in any case. This approach has not proved itself to be useful for consumers and for that reason the requirements for serving pre-contractual information and Standard European Consumer Credit Information aren’t helping in achieving the objectives of the Directive. Bearing digitalisation in mind, the required information can barely be presented in a clear and comprehensive way on mobile devices.

The reduction of information may be also observed through the role of the right of withdrawal. The right of withdrawal is an instrument for the consumer’s protection and when it is granted to the consumer it should diminish some of the requirements for the service providers, especially in the field of the pre-contractual information that needs to be provided to consumers. If the amount of information is not diminished, there is not a substantial meaning of the right of withdrawal.

→ Definition of foreign currency loans

ESBG would like to make a proposal to change the current definition of a foreign currency loan making cumulative and non-alternative the conditions.

This option:

- would be simple to apply and appears fully justified to allow the development of cross-border financing, while maintaining a good level of consumer protection;
- limits the scope of the provisions of Article 23 of the MCD to loans more likely to induce currency risk;
- would be completely aligned with the wish of consumer protection developed by the European Commission in the MCD. Indeed, Article 23 of the MCD Directive provides, among the modalities for limiting currency risk, the right for the consumer to convert the credit agreement into an alternative currency, which shall be either:
  - the currency in which the consumer primarily receives income or holds assets from which the credit is to be repaid;
  - or the currency of the Member State in which the consumer is resident.

These two currencies (income and of place of residence) are considered by the MCD as sufficiently protective of the consumer to propose them as limiting the foreign exchange risk of a loan in a currency. The notion of foreign currency therefore seems legitimate only to apply to a currency that is different from both the currency of income and the currency of the place of residence, which correspond to the proposal of a "cumulative" definition.

FOREIGN CURRENCY LOAN

‘Foreign currency loan’ means a credit agreement where the credit is:

a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; or
b) denominated in a currency other than that of the Member State in which the consumer is resident.

57
Why policymakers should act

Financial institutions are willing to adapt their mortgage lending process but call for adequate implementation deadlines and help with any additional IT support or other additional costs. A proportionate application of the mortgage credit directive could also be examined in more detail by a cost-benefit analysis.

In our view it is very important that during the revision the Commission assesses the consumers’ understanding of, and satisfaction with, the ESIS Art. 44a from the Directive. The effectiveness and appropriateness of the Directive should be the core focus of the Commission study.

The Commission should examine the current definition of foreign currency loans. The market is experiencing difficulties in the application of the rules and we note that due to the current definition there are cases that fall within the scope of foreign currency loans for which the consumer protection measures set out in the Directive should not be addressed or are disproportionate to actual risk for consumers.

It would be beneficial for consumers to narrow the scope, establishing that the definition will imply cumulative conditions (being residence and receiving the incomes or holding the assets in a currency other than the credit is to be repaid). As a result, the current regime excludes certain consumers from mortgage credit, while creditors would be willing to provide credit in a number of scenarios if the foreign currency loan regime were better aligned with the real risks.

BACKGROUND

The EU Mortgage Credit Directive aims to integrate the market for mortgage credit, promote common standards across the bloc and protect consumers at an EU level through responsible lending. The 2014 MCD applies to all loans available to consumers when buying residential property. It has the following provisions:

- an obligation for lenders to provide clear and detailed information on loan conditions to consumers;
- an obligation for lenders to assess the creditworthiness of consumers according to common EU standards;
- common quality standards and business conduct principles for all EU lenders;
- the right for consumers to repay credit earlier than determined in a contract;
- an EU passport scheme that allows credit intermediaries authorised to operate in any EU country to deliver services across the EU.

Since the MCD came into force, there have been numerous additions in the form of supplementary acts (both implementation and delegated) to help strengthen the original text.

The Mortgage Credit Directive ‘study’ is due out in 2019 and will focus only on the topics listed in Articles 44 and 45 of the current directive. It will look into the effectiveness and appropriateness of the provisions on consumers and the internal market. The study will also look into digitalisation and sustainable finance (for example, the EC-funded study on green mortgages). Depending on the conclusions of the Study and the Commission’s assessment, legislative changes may be proposed. Some issues have already been identified as being particularly relevant to the review:

- Loans in a foreign currency (Article 23)
- Digitalisation
- Sustainable finance
IDENTIFIED CONCERNS

The review of the Mortgage Credit Directive is expected soon. In our opinion, there is a need for guidance from the Commission on pre-contractual information and how best to provide ‘barrier-free’ information on, for example, smartphones.

In our view, there is also a problem with cross-border loans which is not only related to the MCD, but also:

- for the fact that those credits are secured with an immovable property and the execution of that property (if the credit is not repaid) may be done in a country different from the country where consumer is domiciled.

- because of jurisdiction in court procedures (EU Regulations 1215/2012, 655/2014 and 1896/2006); proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled. The last provision may be departed from only by an agreement which is entered into by the consumer and the creditor, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State. This means that in order to bring a procedure against the debtor in the country of the creditor, the debtor has to have a domicile within the territory of the country. Having in mind that consumers tend to travel a lot and change domiciles easily these days, bringing a procedure against them is most of the time very difficult or even impossible, because creditors are often in a situation that they do not know where the consumer’s new domicile is.

- when it comes to servicing notices for voluntary payment of the debts and judicial papers – it is almost impossible to find the debtor and serve them with such kind of documents and/or understand where their current domicile is. And this puts a lot of obstacles in terms of the debt collection processes and procedures.
Consumer Credit Directive: simplify, reduce and adapt to digital

PROPOSED SOLUTIONS AND ACTIONS

→ Simplification of information

Consumer credit is normally partially executed through the granting of a handful of small operations to consumers. Those operations are of limited complexity and small amounts, but are, in turn, regulated by considerably complex rules.

As an example of that, the CCD requires creditors to give excessively detailed information to the consumer prior to entering a consumer credit agreement. Nonetheless, consumers ignore information which is too complex or difficult to remember and there is evidence that simpler information with fewer figures is much more effective at landing critical messages. That information may refer to information that only reflects the specifics of the product and meets with client’s expectations for short and clear information – for example – the repayment periods, the amount of the repayment instalments and the applicable interest rate.

→ Reduction of information

Regarding the pre-contractual information, it is important to focus on diminishing the number of pre-contractual documents, which banks are obliged to serve to consumers in any case. This approach has not proved itself to be useful for consumers and for that reason the requirements for serving pre-contractual information and Standard European Consumer Credit Information aren’t helping in achieving the objectives of the Directive. Bearing digitalisation in mind, the required information can barely be presented in a clear and comprehensive way on mobile devices.

The reduction of information may be also observed through the role of the right of withdrawal. The right of withdrawal is an instrument for the consumer’s protection and when it is granted to the consumer it should diminish some of the requirements for the service providers, especially in the field of the pre-contractual information that needs to be provided to consumers. If the amount of information is not diminished, there is not a substantial meaning of the right of withdrawal.

→ Regulate activities rather than institutions

In ESBG’s opinion, gold plating practices in the implementation of the CCD by Member States have limited its effectiveness. Unregulated entities can take advantage of the consumer trust that regulated entities have gained through the years, and even put that trust at risk if they fail to deliver fair and transparent results, increasing regulated entities’ reputational risk. Therefore, a strict implementation of the CCD by all Member States would give consumers better visibility on their level of protection in Europe. In this sense, the CCD should regulate that consumer credit activity should be a reserved activity and should require the application of policies on responsible lending, transparency and customer protection.

Creditworthiness assessment requirements should be flexible and preserved for each Member State and each credit institution

In our view an effective creditworthiness assessment can’t be standardised, because of the following non-exhaustive reasons:

• it should be based on the knowledge of the borrower and on the ability to take into account the specificities of his situation, not on a mechanically applied criterion. This knowledge - inherent to the banker’s job - can’t be standardised.

• standardising the assessment of risk profile would block the market without taking into consideration the peculiarities of each Member State.

• it also may lead to a legal risk of not being able to deny credit if the European criteria are met.

• common indicators wouldn’t allow to take into consideration the economic and cultural background: the same indicators will not necessarily mean the same in different countries (e.g.: savings habits, national rates of divorce, cost of education for children).
IDENTIFIED CONCERNS

The CCD evaluation has so far looked at the relationship between the needs and problems in society and the objectives of the Directive.

However, more importantly for us is the impact that digitalisation has had on consumer credit. The emergence of a variety of new technologies has commanded the development of the digital transformation in the commercial and corporate aspects of banking. It is easy to observe a significant upward trend in the budget share dedicated to R&D.

However, the CCD did not anticipate that technological disruption, and new digital means have brought a diverse set of innovative distribution channels, and along with them, new communication means, new ways to access credit and the uniformity of credit agreements.

The use of smartphones, tablets, computers, headsets, and other devices, for not only searching products, but also for entering into credit agreements, is a reflection of the reality that has exceeded the expectations considered by the legislators when agreeing the CCD.

In this regard, special attention needs to be paid to the information to be provided to consumers before entering into the credit agreement. In some Member States, particular attention must be paid to the actual conclusion of the credit agreement when using these devices. Art. 10 para 1, in which the text form of credit agreements is standardised as sufficient, should be harmonised to a maximum in the future, in order to enable a digital conclusion. At present, many Member States have adopted stricter rules (e.g. written form), representing a real barrier for the single market. In our view, in order to adjust the already adopted measures to the new digital technologies it is necessary to assess how much detailed information is required and how it can best be provided to consumers.

We have noticed that new market players such as crowdfunding platforms or SMS loan-providers have not yet played such a major role in the area of consumer loans. Nevertheless, we see a tendency for this role to increase in the future and for considerable changes to be expected in consumer loans as well.

BACKGROUND

The EU Consumer Credit Directive (CCD) is designed to strengthen consumer rights and help potential customers make an informed choice when signing up to a credit agreement. Lenders provide standardised information on the product, allowing clear comparison by the consumer with other products available to them. In addition, lenders provide detailed information on the annual percentage rate of change; including the total cost of the credit.

The EU CCD was finalised in 2008. In 2011, an annex was added to clarify the rules on calculating the Annual Percentage Rate of Charge (APR). Finally, in 2014 a report was published in the Implementation of the directive. In January 2019, the European Commission launched a consultation on the evaluation of the CCD, following on from an evaluation and fitness check roadmap from summer 2018. The review aims to assess the effectiveness, efficiency, coherence, relevance and EU added value of the Consumer Credit Directive. It focused on the progress made to date, costs and benefits in relation to different stakeholders and whether original objectives and tools of the Directive have corresponded to current needs. It also monitored how the Directive works together with other pieces of legislation and whether the EU intervention has delivered additional added value.
Creating an integrated, innovative and efficient European Payments Market
PROPOSED SOLUTIONS AND ACTIONS

Harmonisation remains lacking between the various APIs (Application Programming Interfaces) or API initiatives. This is one of the greatest challenges in the PSD2 implementation process. If this process continues forward beyond PSD2 — and if it is to be envisaged as a suitable future-oriented way towards some form of well-understood open banking — then it is important that work in the ERPB SEPA API Access Scheme Working Group be retaken. That work should aim to create a more standardized API environment in Europe. Creating such a common API scheme would greatly reduce investments required for a PSP to connect to another PSP, hence further strengthening the European payments ecosystem. It is important, however, that data sharing can continue to be performed on commercial terms and reciprocity and with utmost respect to consumer protection. It is also important to continue this stream of work as it gathers in the same forum participants from all parts of the industry along with supervisors and regulators. Given the opportunity, ESBG will continue to support further standardisation of European APIs and the interconnectivity throughout the industry. ESBG supports as well a data-sharing economy based on mutual benefits and reciprocity.

Concerning instant payments, it is important that the industry continue to support the work done by European market infrastructures such as the TIPS system of the ECB or other privately developed ones. This could be done by building further applications based on these infrastructures, especially on a pan-European level. Here it is especially relevant that the dialogue between policy makers, infrastructure providers and the industry intensifies to reach the most optimal outcome that also should be based on a business model that is attractive to all participants.

Why policymakers should act

We fully support the principles of PSD2 and GDPR, but certain factors need to be taken into consideration. Those include:

- Consumer protection;
- Secure customer authentication;
- Ensure that a TPP only accesses the data it is allowed to access;
- Ensure interoperability between institutions;
- Fair competition respecting intellectual property of all parties involved; and
- Allowing for sound and sustainable business models.

Also, beyond PSD2 and on the road towards open banking and a data sharing economy, there is need for a more fair foundation to be put be in place. An access scheme that clearly spells out rights and obligations, based on mutual benefits, can provide the necessary building block safeguarding the interests for all involved.

The payments industry already supports instant payments at pan-European level and instant payments solutions exist at domestic level in many countries. At the same time, the industry stands ready to support new pan European initiatives. But before compelling customer propositions can be developed, there is need for certainty about a sustainable business model for instant payments, as the massive investments required need to be offset by a proper business case. Previous attempts to develop pan-European payment solutions – notably in the area of payment cards – failed due to the lack of support from the policymakers for a proper business model. There is a sense of urgency to develop European payment solutions to remain relevant. We ask policymakers provide support.
IDENTIFIED CONCERNS

PSD2 and GDPR both cater for third party access to customer data. PSD2 is limited to data from payments accounts and payments data, where this data should be made available for free based on a consent given by the customer to other licensed Payment Service Providers (PSPs). Under GDPR, this process is somewhat different, requiring an explicit consent and requiring access to data is on specific terms. The major challenge for access to PSD2 data is to ensure that it is performed in a safe and secure manner, preferably through dedicated interfaces so called APIs and with Secure Customer Authentication. These two factors together with the commercial terms will be the next challenges in building a safe and fair European open banking ecosystem for all stakeholders.

To ensure this happens, the Euro Retail Payments Board (ERPB) has set up a Working Group on a Single Euro Payments Area (SEPA) API Access Scheme that embraces a scope going beyond PSD2 and that recognises the need for mutually beneficial agreements between third-party payment providers (TPPs) and Account Servicing Payment Service Providers (ASPSPs, or de facto banks). The success of this scheme is vital to ensure a quick transition into transfer of data through APIs as the main channel of transfer. This will provide customers with a safe environment to use different types of financial products in a digitalized ecosystem. The Working Group has published their report in June 2019, and several next steps were identified. A small set of stakeholders (TPPs) did not agree on all the next steps, however, so the work has come to a standstill for the time being. Banks consider it extremely critical to have a scheme – built upon mutual benefits – in place as a critical building block towards open banking and a data sharing economy.

On instant payments and as solution to address a greater European sovereignty in the area of payments, reachability and interoperability are key concerns, in particular in light of the political dimension of instant payments as they could be an instrument to enhance European sovereignty in payments. Various market initiatives based on instant payments already exist, most of them with local focus though. It should be noted though that different consumer preferences exist across Europe when it comes to payments, and it is not likely to expect that one instant payments “killer” solution will replace, in a predictable future, other widely popular payment products, most notably cards and even cash. Further, whilst there is support for the ambition for pan-European payment solutions, it is a key requirement that there is certainty about the underlying business models for such solutions.

BACKGROUND

The Lisbon agenda back in 2000 provided the starting point for the creation of the ‘Single Euro Payments Area’ (SEPA) based on the euro common currency. A major objective was a harmonisation of existing legacy payment schemes in the euro area, which led to the introduction of four pan-European payment schemes for credit transfers and direct debits since 2008 with pan-European reach.

A next big step was the migration to the new payment schemes. One important legislative instrument was the Payment Services Directive (PSD) published in 2007 that formed an important step towards a legally harmonised payments area. The revised PSD2 (2015) objectives include making payments more secure and contribute to a more integrated, innovative and efficient European Payments Market. PSD2 enables third-parties to build financial services on top of banks’ data and infrastructure by accessing bank customers’ payment accounts through online interfaces. This allows both retail and corporate customers to use licensed TPPs to support managing their payments services with their ASPSPs. In parallel, European policymakers are particularly keen on ensuring that future developments in the field of instant payments lead to the emergence of EU-wide cross-border instant payment solution(s) in euro. This chapter addresses both PSD2/open banking and instant payments topics.

PSD2 was published in December 2015 in the Official Journal and is applicable from 13 January 2018. However, the final Regulatory Technical Standards (RTS) on Strong Customer Authentication (SCA) and Common Secure Communications (CSC) – i.e. how TPPs are allowed to access customer payment accounts – apply first on the 14th of September 2019. To this RTS, the European Banking Authority (EBA) has published Guidelines that aim at specifying the conditions that need to be met in order for the bank to restrict access to payment accounts exclusively through dedicated interfaces (APIs); this by obtaining an exemption from the obligation to offer a fall-back solution (contingency method of access through screen scraping) from its National Competent Authority (NCA). The EBA has also published an Opinion on this matter, and has also provided clarifications via their Q&A process. This access to payment accounts is seen as one of the first building blocks to European open banking.
With respect to instant payments (or real-time payments), as per the European policymakers, the need for European instant payment providers is a question of ensuring “political sovereignty”, alluding to fears that foreign governments could hold leverage over the EU if global companies from non-European countries – such as the United States and China – become too prominent across the Continent. The experiences in the cards world, where in fact American card schemes provide the only solutions that make card transactions work across Europe, drive this fear.
21st Century banking: digital connection

Open Data Economy
Innovation Facilitators
Crypto-assets
Crowdfunding
Artificial Intelligence
Cloud
Cybersecurity
ESBG calls for a deepening of the Digital Single Market and the FinTech Action Plan and is in favour of a continued industry dialogue in the next mandate period of the EU institutional bodies. Policy responses relating to digitalisation and innovation in financial services should keep pace with the evolution of financial technology. Therefore, a constant dialogue between policymakers and savings and retail banks would be beneficial.

It is important to use the term FinTech correctly: FinTech products and services can be provided by either financial institutions, such as savings and retail banks, or new entities. Considering FinTech companies as different types of firms can lead to misjudgements when defining a regulatory framework to FinTech activities. Applying the term “FinTech” in the sense of “start-ups”, can be misperceiving and limiting since banks and other institutions also invest heavily in digitalisation and new technologies. “FinTech” should thus be understood as “technology enabled innovation in all financial services” where banks are considered a central actor and partner for establishment of both a strong FinTech framework and a true Digital Single Market. Therefore, it is of utmost importance to develop a strong framework through the application of an appropriate definition creating a level playing field in a technology neutral ecosystem.

ESBG advocates for the following high-level principles to create a regulatory and policy framework that promotes successful innovation and digitalisation of the European economy:

• **A level playing field between stakeholders**, and the principle of “same business – same risk, same rules and supervision” should be respected in every policy debate and regulatory framework. Including a holistic and horizontal approach towards the data economy, where access to data and data sharing are seen in a broader context beyond financial services.

• **Technology neutrality** needs to be a core principle as it should be the entity, the service and/or the product that are regulated and not the technology.

• **Consumer protection, cybersecurity and competition** should be at the forefront of EU priorities.

• **A level playing field across regulation and Member States** should also be ensured to prevent barriers to innovation and disparity in technological speed between countries. **Consistency** is essential in legal application between member states and horizontal communication between supervisors (both geographically and across areas of responsibility).

• **Finally, digital skills** need to be fostered to prevent digital exclusion, heighten data awareness and consumer protection.
Open Data Economy:

same business – same risk, same rules and supervision

Non-European technology providers with giant capitalisation and massive market power in diverse digital services markets (so-called “BigTechs”) are currently strengthening their positions on the European market, leveraging opportunities brought by new technologies and the creation of digital platforms. Whilst those platforms and innovations have brought about numerous benefits, their rapid growth also generates new challenges and concerns, such as the risk of monopolisation of the internet economy in the hands of few (non-European) players, as well as data protection and privacy risks.

There are issues that need to be taken seriously through a holistic policy debate, but especially taking into account the potential impact of the expansion of these platforms into offering financial services, or other services that cross-use consumers’ financial data. Europe has to ensure that the European economy and European corporations, including in financial services, are equipped with the right framework to be competitive and innovative in order for Europe to play a relevant role in the global data-driven digital economy. It should, for instance, be ensured that enterprises can cooperate more closely in the digital field on both national and European level.

In relation to a potential open data economy – namely, access to and use of consumer data by corporations – ESBG advocates for a level playing field between incumbent players, smaller and newer players as well as larger “BigTechs”, in terms of both regulation and supervision.

Cases of BigTech companies denying access to their platforms or software/hardware-interfaces towards the banking industry occur. Such behaviour illustrates the necessity of a reformed legal framework to establish and ensure a level playing field in digital financial services.

Why policymakers should act

A level playing field between stakeholders, and the principle of “same business – same risk, same rules and supervision” should be respected in every policy debate and regulatory framework. That includes a holistic and horizontal approach towards the data economy, where access to data and data sharing are seen in a broader context – beyond financial services and new players such as FinTech startups of international technology giants that are entering European markets.

There is need for a level playing field between incumbent players, smaller and newer players as well as larger “BigTechs”, in terms of both regulation and supervision.
Innovation Facilitators:

a level playing field for regulatory sandboxes and innovation hubs

PROPOSED SOLUTIONS AND ACTIONS

ESBG is in favour of a clear EU framework with clearly defined rules. This could avoid the fact that several supervisors cannot establish a regulatory sandbox as they are only mandated to supervise compliance and not allowed to make any exemptions from the law.

The guiding principle governing FinTech supervision, inside and outside of regulatory sandboxes, is that similar risks should always attract similar regulatory treatment. In this sense, the regulatory regime should not differ depending upon the type of entity delivering the FinTech service. Additionally, ESBG believes that a regulatory sandbox should not discriminate specific types of entities and be open to newly founded entities and incumbent institutions and technology providers alike. They should even enhance cooperation between established firms and financial start-ups.

An adequate set-up of the supervisory cooperation in this matter is of the utmost importance; as access to sandboxes and innovation hubs give both operational and regulatory advantages to firms using them, the selection criteria for entering sandboxes and innovation hubs need to undergo a thorough discussion involving firms and authorities.

In addition, to ensure a level playing field with those outside the sandbox, transparency on the potential regulatory outcome resulting from the test should be ensured.

BACKGROUND: WHAT THE EU HAS DONE SO FAR

According to the European Supervisory Authorities, it is possible to define:

- **a regulatory sandbox** as: ‘a scheme set up by a competent authority that provides regulated and unregulated entities with the opportunity to test, pursuant to a testing plan agreed and monitored by a dedicated function of the relevant authority, innovative products or services, business models, or delivery mechanisms, related to the carrying out of financial services’; and

- **an innovation hub** as ‘a scheme whereby regulated or unregulated entities can engage with competent authorities on FinTech-related issues and seek non-binding guidance on the conformity of innovative financial products, services, business models or delivery mechanisms with licensing, registration and/or regulatory requirements’.

Jointly the two of them, together with other regimes, are also called ‘innovation facilitators’.

Why policymakers should act

Innovation facilitators – such as regulatory sandboxes and innovation hubs – can facilitate the creation of an EU single financial services market. There is a need for common approaches and responses to regulatory and supervisory issues relating to innovation facilitators in order to prevent discrepancies and an uneven level playing field and enable EU operators to act consistently on the international scene. Varying approaches and competition between national authorities can lead to regulatory arbitrage.

Similar risks should always attract similar regulatory treatment. In this sense, the regulatory regime should not differ depending upon the type of entity delivering the FinTech service and both incumbents and newcomers should be considered for entry.
The Commission initiated their policy development for innovation facilitators in its ‘FinTech Action Plan’, published in March 2018, which provided for specifications to be taken in this field. The ESAs’ later published a Joint Report in January 2019, named ‘FinTech: Regulatory sandboxes and innovation hubs’, in which they set out a comparative analysis of the innovation facilitators and ‘best practices’ regarding their design and operation of innovation facilitators. The Report also highlights options, to be considered in the context of future EU-level initiatives.

The Commission is now expected to publish a blueprint based on the Joint Report. In the meantime, the Commission launched the European Forum for Innovation Facilitators (‘EFIF’), where stakeholders can exchange views and practices.

IDENTIFIED ISSUES AND CONCERNS

ESBG welcomes the initiative of the European Commission to launch the EFIF. However, even though remarkable, ESBG considers such an initiative insufficient to harmonize policy at EU level, as the EFIF is merely a forum to exchange best practices between financial regulators and supervisors and private operators, making it insufficient in the strive for a level playing field and the avoidance of regulatory arbitrage between Member States. It does not involve other supervisors and regulators which usually act in different frameworks, such as those dealing with cybersecurity and/or data protection (e.g. ENISA, EDPB, etc.).

On the same note, ESBG believes that the approach adopted so far by the Commission favours a fragmentation of the regulatory framework, as it takes into account only regulators and supervisors belonging to the financial services regulatory framework, without considering the need to involve also the mentioned supervisors and regulators acting in different frameworks.
Crypto-assets: protect the consumer

PROPOSED SOLUTIONS AND ACTIONS

An EU regulatory framework for crypto-asset markets should be a key priority for the next European Commission. ESBG would like to make the following three recommendations:

• Market venues for virtual currencies and tokens must be organised; including requirements on price transparency, fight against money laundering and information disclosure.

• The EBA and ESMA reports on crypto-assets properly assessed the conditions for the application of the current regulatory framework to different types of crypto-assets. However, following that work from the supervisory authorities, legislators need to take action and regulate the areas where the policy framework is still not clear or inexistent, or where it needs some sort of adaptation. As a first step, for instance, EU legislators need to define a proper classification of the categories of crypto-assets; this is whether they fall under an existing financial instrument category or require an ad hoc classification.

• Adapting the regulatory framework for ICOs’ application, the secondary markets and the platforms where crypto-assets are exchanged is of great importance. ESBG is particularly in favour of a comprehensive analysis by EU regulators on the necessary adaptations that the regulatory framework needs in order to integrate ICOs on the diverse set of rules applying to other forms of raising capital. In addition, once the regulatory approach is defined and implemented, it will be necessary to ensure a single supervisory approach on ICOs. Indeed, ESBG believes that there are currently opportunities for regulatory arbitrage, even within the EU, that cannot be tolerated and need to be tackled. ESBG supports that a specific omnibus legislative proposal following a comprehensive impact assessment, should be put forward by the European Commission.

BACKGROUND: WHAT THE EU HAS DONE SO FAR

In March 2018, the Commission published its FinTech Action Plan. This Action Plan addresses several topics, among them planned steps to remove obstacles in implementing FinTech solutions including actions on Initial Coin Offering (ICO) and crypto-assets. However, the EU has not developed yet an EU regulatory framework to legislate crypto-assets and the markets and platforms where they are exchanged.

IDENTIFIED CONCERNS

ESBG is concerned by the numerous reports of abuses of retail investors’ trust on innovative services providers, as well as the emergence of highways circumventing policy frameworks carefully crafted over the last decades, accompanied by the use of blockchain technology. In particular, we are concerned by the following issues:

• Regulatory uncertainty on ICOs leaves room for a growing part of the economy that remains in regulatory limbo, helping new firms flourish at the expense of heavily regulated competitors and investors’ protection.

• The growing risks stemming from the impact cyber-attacks can have on the ICO market needs to be addressed, for instance when a crypto exchange has their crypto-currencies stolen due to a technical flaw.

Why policymakers should act

Decisions need to be made with regards to the application of the EU financial markets regulatory framework to crypto-assets without undue delay. It is paramount that investors benefit from a high level of protection and that a regulatory level playing field is ensured. Such a framework, however should focus on the currencies and not the technologies enabling them.
The lack of clarity on which ‘white papers’ must be applied (e.g. in some cases the Prospectus Regulation may apply, but in others it may not, while sometimes even applying that Regulation might need an adaptation to the different technological environment). This lack of clarity often provokes inexistent due diligence performed by investors; attracted by quick gain promises, allowing for many ICOs to result in scams with relevant financial losses for retail investors.

Similarly, crypto-currencies and stablecoins lack a clear regulatory approach from EU authorities.

The anonymity of the wallet holders and the existence of blockchains specifically designed to ensure secrecy over the sender, the receiver and the amount transferred, create virtually risk free ways of laundering money originating from criminal activities or hiding the financing of terrorist organisations.
Crowdfunding:
inform the investors of specific risks

PROPOSED SOLUTIONS AND ACTIONS
ESBG believes that crowdfunding platforms’ disclosure requirements, registration requirements, risk management and consumer/investor protection rules should be harmonised. We are concerned that local platforms operating below ‘best practice’ standards could have a negative effect on the trust in platforms across the EU.

Existing regulations of credit institutions, credit intermediators and investment firms should be considered to reflect different services and nature of platforms. Therefore, to enhance consumer protection, crowdfunding platforms should be obliged to inform investors of specific risks associated with the investments being made.

BACKGROUND: WHAT THE EU HAS DONE SO FAR
Crowdfunding is an emerging alternative form of financing that connects those who can give, lend or invest money directly with those who need financing for a specific project. It usually refers to public online calls to contribute finance to specific projects.

According to the European Commission, the EU market for crowdfunding is underdeveloped as compared to other economies. In October 2017 the European Commission published an inception impact assessment on a legislative proposal for an EU framework on crowd and peer to peer finance. ESBG responded via the Commission’s ‘Have Your Say’ tool on this impact assessment in January 2018. In March 2018, as part of its Fintech Action Plan, the European Commission presented a proposal for a regulation on crowdfunding service providers. Once adopted at EU level, the new regulation will aim to allow platforms to apply for an EU passport based on a single set of rules. This should enable them to offer their services across the EU. Before the break for the EU elections, the crowdfunding position had been fixed by the European Parliament and the Council also agreed on its position. In the next parliamentary term, trialogue negotiations are due to take place to finalise this file.

IDENTIFIED CONCERNS
It is important to safeguard similar rules and regulations for all market participants (banks and others) to ensure a consistent level playing field for EU and non-EU players, as well as avoiding, for example, fraudulent schemes. These points need to be borne in mind by the EU decision-makers when they finalise this file.
Artificial Intelligence (AI):
a technology-neutral approach

PROPOSED SOLUTIONS AND ACTIONS
ESBG is supportive of the EU approach on AI and in our view any policy should be technology-neutral: the same activities should be subject to the same regulation irrespective of the way that the service is delivered, so that innovation is enabled and a level playing field preserved. Therefore, no specific regulation applying to financial institutions with respect to AI should exist, as it could be unfairly harmful for the financial services industry if this regulation would imply stricter requirements than in other industries for the use of the same technology.

In case the policymaking would go in the opposite direction, it is of foremost importance in ESBG’s view that responses coming from the financial sector as they emerge in the Piloting Process (both in its quantitative than in its qualitative part) would be taken into account. If a regulation/supervision is to be in place, the supervision should include a combination of a set of minimal rules and ongoing assessment.

From the point of view of transparency, ESBG does not believe that it is convenient to always disclose how the algorithms work, as they are a source of competitive advantage for entities’ business models and this could be put at risk. Additionally, it must be born in mind by policymakers that the content of an algorithm cannot be disclosed without harming trade secrecy: intellectual property needs to be protected, regardless of the technology used for delivering a service.

ESBG opposes the idea of having to undertake independent audits of every algorithm behind AI systems, also due to the burden and cost it would entail for the banking sector. We propose a different type of approach to balance trade secrecy and consumer protection:

One alternative proposal can be, for instance, to adopt a “risk-based approach”: in case of algorithms involving operations heavily affecting human functionalities (and implying, for instance, the risk of harming), it would be important for the algorithms to be explicable.

One other valid alternative could be an approach whereby supervision algorithms could be undertaken following alleged failures to safeguard the protection of consumers.

Ex-post supervisory actions could be taken on algorithms, based on suspicions that AI systems are unfairly discriminating consumers, or incorporating biases unintentionally, but harming consumers.

BACKGROUND: WHAT HAS THE EU DONE SO FAR?
AI has been tackled in certain way by all the institutions including the Commission Communication on AI of April 2018, European Parliament Resolution on a comprehensive European industrial policy on artificial intelligence and robotics of February 2019, and the Council Conclusions on the Coordinated Plan on the development and use of Artificial Intelligence Made in Europe of February 2019.
To boost EU commitment in AI, the Commission has set up a High-Level Expert Group on AI (‘HLEG’) which delivered in early April the ‘Ethics Guidelines for Trustworthy AI’ (the ‘Guidelines’). The Guidelines give instruction on how reaching ‘Trustworthy AI’, which, according to the HLEG, is made up by three components: (a) Lawful AI, (b) Ethics AI, and (c) Robust AI, and is based on the following four principles (i) Respect for human autonomy, (ii) Prevention of harms, (iii) Fairness, and (iv) Explicability.

Based on the stakeholders’ feedback, the HLEG is expected to propose a revised version of the Guidelines to the Commission in early 2020.

IDENTIFIED CONCERNS

As shown in the document “Europe in May 2019” published by the European Commission, there is no European firm in the top 15 digital firms worldwide. This fact expresses the urgency to boost European competitiveness to compete with American and Chinese AI strategies.

Thus, concerning AI industry in general, research and development should be promoted and financed by EU as it is such an important field for the EU to grow in, while, notwithstanding the importance of growing competition on the international scene, European regulators and supervisors agreed to enable a “Trustworthy and human-centric AI” to emerge.

Still concerning competitiveness, it emerges from the Commission’s Communication of April 2019 on “AI Ethics Guidelines” that the principles developed by the AI HLEG are going to be the groundwork for the future European AI regulatory framework.

Therefore, European policymakers have to keep in mind that a choice should be made when it comes to the establishment of this regulatory framework: if it comes too early, it might put in place constraints hindering Europe’s possibility to catch up US and China’s developments; if it comes too late, huge ethical issues could arise.

Coming specifically to the financial services industry, ESBG is of the view that most fears of risks arising from deploying AI systems come from potential biases or discrimination of consumers, including unintentionally. However, we consider that the current financial services legislative framework already provides robust safeguards for consumer protection to be ensured and enforced. Regulations such as GDPR, e-Privacy rules, and requirements regarding responsible lending or the selection of target market of financial services, all applying to AI systems, already provide a comprehensive framework and deliver appropriate safeguards.
Cloud:

continued private-public dialogue needed to tackle challenges ahead

WHAT SHOULD BE THE EU POLICY APPROACH TOWARDS CLOUD?

Regulators need to differentiate requirements on outsourcing arrangements depending upon the types of service outsourced, and not only considering the materiality of the service. There is no room for a one-size-fits-all approach on this. For example, outsourcing of activities not related to financial activities should not be subject to the same requirements applying to those. Therefore, particular attention should be paid to specific aspects such as the scale of the service and the outsourcing arrangement, the nature of the technology, or the level of control maintained by the outsourcing institution.

Rising concentration risks call for a common solution at the EU level, especially as far as negotiating power is concerned, given that some service providers might result as dominant and not easily substitutable counterparts. This challenge could be successfully addressed by providing standard contractual clauses that every cloud outsourcing arrangement should include. Otherwise, financial institutions may encounter difficulty negotiating the terms of the guidelines with large suppliers (e.g. the exercise of unrestricted access rights). Standard contractual clauses could be agreed by all stakeholders in the following areas (the list is not exhaustive): Data protection and privacy; Data localisation; Precontractual information; Unfair contractual terms; Accountability and liability; Exit plans; Audit rights (both of outsourcers and their supervisors); Access to data; Sub-outsourcing and chain outsourcing; Unilateral changes to contractual terms; Business continuity plans; Certificates; Data back-up.

Auto-regulatory initiatives should be supported by regulators and authorities, particularly for the development of codes of conduct on the portability of data between cloud service providers, and of best practices for exit plan testing. Consideration should be given to the testing of the exit plans, and a sufficient termination period should be guaranteed for the outsourcing institution, so that an exit or change of provider does not disrupt the integrity of its services and the protection of its customers.

BACKGROUND: WHAT THE EU HAS DONE SO FAR

The Commission expressed its position on removing obstacles to cloud services, in the context of the FinTech Action Plan launched in March 2018, where:

1. The ESAs were invited to explore the need for guidance on outsourcing to cloud service providers by Q1 2019.
2. Cloud stakeholders were invited to develop cross-sectoral self-regulatory codes of conduct to facilitate switching between cloud service providers. Representatives from the financial sector were invited to enable easier data porting for the sector.
3. The Commission encouraged and facilitated the development of standard contractual clauses for cloud outsourcing by financial institutions.
With the objective of enforcing a “More secure and more competitive cloud computing in Europe”, the Commission has launched two working groups, composed of private-public stakeholders, which have the mandate to conduct self-regulatory work and to provide recommendations to the Commission, ENISA, and the national competent authorities of EU Member States:

(i) The Cloud Switching/Porting Data (SWIPO) for developing self-regulatory codes of conduct to define best practices and information requirements;

(ii) The European Cloud Service Provider Certification (CSPCert) for exploring cloud security options, to enhance legal certainty and trust in the cloud market.

In February 2019, the European Banking Authority (EBA) published its revised Guidelines on outsourcing arrangements, which will start to apply from 30 September 2019. The Guidelines clarify that the outsourcing of activities or functions cannot result in the delegations of the management’s body responsibility, as financial institutions remain fully responsible and accountable for complying with regulatory obligations. On the other hand, the Guidelines recommend that outsourcing arrangements should not create undue operational risks or impair the quality and independence of financial institution’s internal controls, while ensuring service providers’ substitutability, so that a financial institution maintains the power to migrate to another service provider or to reintegrate outsourced functions (with particular attention to critical and important functions).

IDENTIFIED ISSUES AND CONCERNS

ESBG has identified as main concerns for cloud computing:

- **security and data protection** – the need to protect cloud-based systems and data, as a response to constantly evolving and increasingly sophisticated security threats; data localisation – whether to include in cloud agreements the indication of the physical data localisation. The need is to find a European, neutral data localisation while at the same time not compromising security standards;

- **concentration risk and negotiating power** – since cloud outsourcing is “dominated by a small number of highly dominant service providers” which offer “much more standardised” services in comparison to other cloud service providers, and “to a larger number of clients in a much more automated manner and on a larger scales”, the concentration of cloud services among a limited number of players might entails the risk of undermining the negotiation power of banks;

- **vendor lock-in** – due to a lack of negotiating power by banks and to serious technical challenges for changing providers, or even more for taking the outsourced service back to internal data centres, vendor lock-in effects have hampered the competitiveness of the market on cloud services.
Cybersecurity:
more cooperation at EU-level absolutely necessary

WHAT SHOULD BE THE EU POLICY APPROACH TOWARDS CYBERSECURITY?

Significant changes have occurred in the cybersecurity landscape in recent years and the number and diversity of cyber threats, often of borderless character, are a continued concern. Therefore, ESBG approves the aim of the Cybersecurity Act to reinforce the mandate of ENISA, with a role of coordination at EU level to develop closer cooperation for cybersecurity issues.

ESBG particularly welcomes the initiatives on the preventive side, aimed at boosting digital skills on a cross-border basis. The capabilities of industry participants to effectively fight cyber-attacks will be enhanced by adequate training in skills, and by the exchange of threat information in real time between peers, unconstrained by data privacy or competition legislation.

Cooperation with bodies outside the EU should be encouraged, such as the development of reporting processes convergent to a single point (structured messages to report threats and attacks, etc.). ESBG believes that cybercrime can be fought effectively not only by a cooperation of industry sectors but also by working closely with government authorities, for the exchange of information.

As the financial sector becomes increasingly dependent on digital technologies, ensuring its resilience while tackling ever-growing cyber threats is becoming an important concern, for cybersecurity might represent a threat to the stability of the EU financial system.

The cross-border nature of cyber threats requires a high degree of alignment of national regulatory and supervisory requirements and expectations, yet at the same time it should be considered that cybersecurity practices should not diverge between sectors. ESBG thus advises against creating parallel structures for the financial sector but rather, in case of considerations for the need of in-depth exchange, calls for the creation of a specific expert group within ENISA (as the one established at the European Data Protection Board - EDPB) with a twofold mandate. On the one hand, mapping and evaluating specific cybersecurity challenges within the banking sectors. On the other, promoting the coordination and exchange of information among the whole spectrum of stakeholders, therefore giving an input for regulation and policy measures relating to cybersecurity issues which are common across different sectors.

Particular attention should be paid to the inclusion of FinTech newcomers and third parties as well, as they are less used to dealing with cyber-attacks and therefore risk being the weakest link in any data transfer that might include data from banks.

ESBG welcomes the determination of the European Commission to create an EU-wide cybersecurity certification scheme to facilitate a wide and coherent cyber-resilience testing framework, which should be on a voluntary basis, and consider the specific cyber risk profile of the relevant entities tested. Bearing in mind the present significant differences across and within the financial sectors in terms of cyber maturity, ESBG agrees with the ESAs that, for pursuing a specific cyber resilience testing framework, a multi-staged approach to building a coherent cyber resilience testing framework would be the most appropriate at this stage.

Why policymakers should act

Cybersecurity should be at the forefront of digitalisation policy. Continued policy – industry dialogues need to ensure that cybersecurity standards are enhanced, and their enforcement strengthened, while coordination and information sharing between national and supranational authorities should be increased. Yet at the same time it should be considered that cybersecurity rules should not diverge between sectors – parallel structures for the financial sector should thus not be created but integrated in cross-industry frameworks.
BACKGROUND: WHAT THE EU HAS DONE SO FAR

The FinTech action plan has outlined the mission of the European Commission to enhance cybersecurity and cyber resilience in the financial sector, which entails:

- facilitating information sharing on cyber threats among market participants;
- higher supervisory convergence and enforcement of IT risk management;
- increased EU coordination in cyber threat testing.

The European Cybersecurity Act signed on 17 April 2019 strengthens the ENISA, by granting the agency a permanent mandate not only to provide expert advice, but also to perform operational tasks, to better support Member States with tackling cybersecurity threats and attacks through a greater role in cooperation and coordination at Union level. Furthermore, the Act establishes the first EU-wide cybersecurity certification framework to ensure a common cybersecurity certification approach in the European internal market and ultimately improve cybersecurity in a broad range of ICT products and services.

In September 2018, the Commission proposed the creation of a Network of Cybersecurity Competence Centres and a new European Cybersecurity Industrial, Technology and Research Competence Centre to invest in stronger and pioneering cybersecurity capacity in the EU.

Moreover, the Commission is working on a new Directive on the combatting of fraud and counterfeiting of non-cash means of payment to provide for a more efficient criminal law response to cybercrime.

The EBA launched a consultation on its draft Guidelines on ICT and security risk management at the end of 2018, which ran until mid-March 2019, establishing requirements for credit institutions, investment firms and payment service providers (PSPs) on the mitigation and management of their information and communication technology (ICT) risks.

ESAs published on 10 April 2019 a Joint Advice on Information and Communication Technology risk management and cybersecurity.

IDENTIFIED ISSUES AND CONCERNS

ESBG has identified as main concerns for cybersecurity in the banking sector:

- **increased EU coordination** – as the financial sector becomes increasingly dependent on digital technologies, the need to build greater cooperation at Union level (for example, ensuring a common cybersecurity certification approach)

- **fraud prevention** – the need for a common EU approach to increase cyber resilience in the financial sector to prevent and counter frauds. Service providers must constantly adjust, and refresh measures designed to protect data to mirror the constantly evolving technology and thus new threat profiles.
Sustainable finance: breaking new ground

Taxonomy
Green bonds
**Taxonomy:**

Create investment framework that is dynamic and takes into account the specificities of savings and retail banks

**PROPOSED SOLUTIONS AND ACTIONS**

The specificities of retail banking should be taken into account in the framework in order to make sure that the taxonomy works for all types of economic activities, such as SME lending, energy efficiency of residential real estate. While the technical screening criteria of the taxonomy must remain consistent and encourage capital reallocation towards a sustainable economy, they should be selected so that they may be applied to all relevant financing activities without creating an excessive administrative burden for some players. In other words, all financial institutions should have the tools at hand to play a vital role in financing the transition to a more sustainable EU economy. Definitions should therefore be clear, and applicable indicators should ensure a sufficient degree of comparability.

Where criteria already exist in relevant legislation, such as in forestry, those criteria should be used and referred to. As a matter of legal certainty, financial contracts concluded before the framework to facilitate sustainable investment (Taxonomy Regulation) and the associated delegated acts enter into force should be grandfathered, out of their scope. Generally speaking, we regard it as important that the clients keep freedom of choice on whether to invest or lend in sustainable products.

A workable and dynamic taxonomy is essential to ensure a homogeneous inclusion of environmental considerations throughout the EU. The taxonomy needs to take into account SME lending and improvement of the energy efficiency of private real estate.

**IDENTIFIED CONCERNS WITH THE TAXONOMY PROPOSAL**

The regulation establishing a framework to facilitate sustainable investment will play a central role, as it will not only harmonise national public taxonomies but also define standardised disclosure obligations on financial market participants. It should hence be the basis for upcoming legislations relating to sustainability in finance. As an indispensable milestone, the taxonomy should be made operative before regulatory measures relying on it are implemented and the different sustainable finance legislative proposals should be synchronised.

**BACKGROUND**

Acknowledging the urgent need to further promote sustainable growth, the European Commission published an Action Plan on Sustainable Finance in March 2018. The Action Plan set out 10 actions to reorient capital flows, manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues, and to foster transparency and long-termism. One fundamental piece of legislation “establishing a framework to facilitate sustainable investment” is currently discussed. This legislation is fundamental in order to create a common language – a “taxonomy” – on sustainable finance and define what can be considered an environmentally sustainable economic activity.

**Why policymakers should act**

Because of the key role of the regulation establishing the sustainable finance taxonomy, defining a workable framework is absolutely necessary to ensure a homogeneous inclusion of environmental considerations throughout the EU and ensure the financing of the transition towards a low-carbon economy. Furthermore, it is important for policymakers to acknowledge the dynamic inherent to the transition process in order to reflect it in the taxonomy and make sure adequate incentives can be put in place, which the static approach of the current taxonomy cannot do.

In that perspective, we believe that the EU could be more ambitious and build up from the TEG’s work to include all sectors in the classification system and adopt a more granular approach. It should rather allow users of the taxonomy to assess the degree of sustainability of the economic activities. This would allow the taxonomy to function as a tool contributing to increased sustainability as well as to the objectives of the Action Plan on Sustainable Finance, while fitting in with the Union’s broader ambitions, including the EU 2050 low-carbon economy strategy.
Sustainable Finance:
sustainability risks and factors: legal certainty is required

PROPOSED SOLUTIONS AND ACTIONS

It would make sense for the European legislator to set a (minimum) standard that product manufacturers or certification bodies can use. Without a common taxonomy, we support integrating ESG preferences with the MiFID II requirements through a high-level principle-based approach. Further specifications should occur only when the legal bases exist (i.e., when the Taxonomy Regulation has been finalised and has entered into force). It is also important to ensure a level-playing field for all market participants, with the same rules applying to similar businesses, in particular with regard to product governance and the advisory process.

IDENTIFIED CONCERNS

Concerns have been expressed about the timing. Not only is the absence of a clear view on the outcome at level 1 on the framework to facilitate sustainable investment (“Taxonomy”) challenging, but the lack of legal definitions makes integrating sustainability risks and factors problematic, both from a Better Regulation and implementation point of view. Currently, a lack of common market standard that capture all relevant ESG factors in a suitable way implies that entities use a wide range of different labels, with different scoring and scales. This situation makes comparison difficult or impossible for customers. The adoption of the taxonomy will only clarify the integration of some environmental considerations. However, the integration of other factors and risks (social and governance) will continue to be challenging.

BACKGROUND

The Commission plans to clarify through level 2 initiatives how asset managers, insurance companies, and investment or insurance advisors should integrate sustainability risks and, where relevant, other sustainability factors.

The Commission will further specify:

- Organisational requirements, in particular the integration of sustainability risks in the corporate governance mechanisms within the organisation of the financial market participants and investment and insurance advisors;
- Operating conditions, in particular the integration of sustainability risks within the conduct of business or prudent person rules and due diligence requirements;
- Risk management, in particular to require that risk assessments should consider both financial and relevant sustainability risks; and
- Target market assessment, in particular to ensure that sustainability factors are taken into account in the target market assessment by investment firms manufacturing financial instruments and their distributors, and insurance undertakings, intermediaries manufacturing insurance products for sale to customers and insurance distributors.

EIOPA and ESMA provided technical advice in April/May 2019. The Commission will now take into account this advice in order to update MiFID II delegated acts. EIOPA and ESMA will also provide guidelines after the issuance of level 2 legislation.
Sustainable Finance: Green Bonds should be universally applicable

PROPOSED SOLUTIONS AND ACTIONS
The Green Bond Standard should be fully aligned with the taxonomy and the requirements under the Regulation on disclosures relating to sustainable investments and sustainability risks, as well as other applicable legislation. Furthermore, any encouragement or incentives should not induce distortive effects on the market, which would ultimately weaken the credibility of the EU green bond standard. Particular attention should be taken to avoid disruptions to existing, well-functional markets for green bonds. The EU Green Bond Standard could be a useful reference in the loan market, harmonising concepts and definitions. Green bonds issued before the EU Green Bond Standard should benefit from a form of grandfathering in order to avoid disruption on the market.

IDENTIFIED CONCERNS
The EU Commission initiative is most welcome. However, it must be ensured that the EU Green Bond Standard is a functional tool – like the taxonomy – ensuring comparability, uniformly applicable without discrepancies or distortive effects. The expected timeframes for the application of the EU Green Bond Standard, on one hand, and of the taxonomy on the other, may therefore be challenging.

BACKGROUND
In May 2018, the Commission announced – as one important part of its Action Plan on Sustainable Finance – the development of an EU Green Bond Standard. Green bonds are necessary to foster the financing of green or sustainable projects. To enable a level-playing field for all issuers and investors, the EU Green Bond Standard should enhance transparency, consistency and comparability of EU green bonds. The Commission also plans to adopt a delegated act on the content of the prospectus for green bond issuances. This should create new opportunities for responsible investors (private and institutional) and help avoiding “greenwashing”.

Why policymakers should act
In this context, initial flexibility would be welcome, but universal applicability, functionality and comparability in particular should be ensured. There should not be differences in terms of overall applicability and usability of the standard between different sectors. Otherwise, the standard will effectively steer investment into certain assets, while failing to have a larger impact on the market as a whole.
Financial education: Money Matters
PROPOSED SOLUTIONS AND ACTIONS

More leadership is needed from policy makers in Europe. Although education remains a competence of the Member States, the European Parliament could play an especially promoting role of financial education by, for example providing fora for policy discussions with stakeholders and exchange of excellent practices on matters such as the need for more financial literacy of the population in general, particularly in respect of the digital megatrend, changing labour markets and skills needs. More precisely, the European Parliament could advocate that the European Commission adopts more leadership in the promotion of financial education by, for example, organising and coordinating a European Financial Education day, where all interested stakeholders would be encouraged to participate. WSBI-ESBG, together with its members, organises workshops on financial education, often within the framework of the World Savings Day. Initiated by WSBI and celebrated at the end of October, the World Savings Day is an annual campaign started in 1924 that aims to make all citizens aware of the benefits of saving money. After almost one century, the initiative is more alive than ever, with events being organised in dozens of countries around the world.

IDENTIFIED ISSUES

People need to have the knowledge that will help them prevent falling into over-indebtedness. 21st century topics related to financial innovation and the trend towards digitalisation, particularly with the emergence of crypto-currencies and robo-advice, lead to growing consumer and investor protection concerns. Furthermore, there are nuanced topics that also require information to educate people, such as the existing information asymmetry between businesses and consumers, the increasing responsibility on households, and the need to understand what should be the role of finance in society and how citizens could have a drive in this.

BACKGROUND

In the current socio-economic context, it is of utmost importance to foster entrepreneurship, numeracy skills and other skills related to financial matters. Doing so provides citizens, particularly the youth, with the necessary tools to succeed in economic life and society. Raising levels of financial literacy is one recommendable way forward when it comes to making societies more inclusive and boosting citizen empowerment, ultimately contributing to reaching the Sustainable Development Goals approved by the United Nations General Assembly. Financial Education particularly contributes to attain the objectives set by Goal 4, regarding qualitative education. In addition, financial education is instrumental to achieve greater levels of sound financial inclusion.

Why policymakers should act

A lot has already been done, including, particularly, by savings and retail banks, but the levels of financial literacy are not yet where they ideally should be. We see as crucial the need to empower citizens – and particularly the youth – in the best possible way to succeed in economic life, to understand complex financial moments, such as the acquisition of a mortgage, the need to have insurance or the need to save for retirement (given the transfer from defined benefit pension schemes to defined contribution pension schemes, for instance).
ESBG members

- Albania: Banka Kombetare Tregtare (BKT)
- Austria: Österreichischer Sparkassenverband (Austrian Savings Banks Association)
- Belgium: Coördinatie van Belgische spaar- en netwerkbanken (Coordination of Belgian Savings and Network Banks)
- Bulgaria: DSK Bank
- Czech Republic: Ceska Sporitelna AS
- Denmark: Lokale Pengeinstitutter
- Finland: Säästöpankkiliitto (Finnish Savings Banks Association)
- France: Groupe BPCE; Fédération Nationale des Caisses d’Epargne
- Germany: Deutscher Sparkassen- und Giroverband e.V. (DSGV – German Savings Banks Association)
- Hungary: OTP Bank plc
- Iceland: Samband Islenskra Sparisjóda (Icelandic Savings Banks Association)
- Italy: Associazione di Fondazioni e di Casse di Risparmio Italiane (ACRI – Association of Italian Foundations and Savings Banks); Pri.Banks – Associazione Banche Private Italiane
- Luxembourg: Banque et Caisse d’Epargne de l’Etat (BCEE)
- Malta: Bank of Valletta Plc
- The Netherlands: De Volksbank
- Norway: Sparebankforeningen i Norge
- Portugal: Caixa Geral de Depósitos; Montepio Geral
- Romania: Bancpost
- Slovak Republic: Slovenska Sporitelna AS
- Spain: Caixabank; Confederación Española de Cajas de Ahorros (CECA – Spanish Savings Banks Association)
- Sweden: Swedbank; Sparbankernas Riksförbund (Swedish National Savings Banks Organisation)

ABOUT ESBG

ESBG represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 900 banks, which together employ 656,000 people driven to innovate at 48,900 outlets. ESBG members have total assets of €5.3 trillion, provide hundreds of billions of euros in SME loans, and serve 150 million Europeans seeking retail banking services. ESBG members are committed to further unleash the promise of sustainable, responsible 21st century banking. Learn more at www.wsbi-esbg.org