A Heavily Regulated Industry

The Varied Objectives of Financial Regulation

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The Evolving Nature of Financial Regulation

Until the early 1970s, the various national systems of banking regulation had largely monetary objectives. Controls on commercial banking activity (including administratively set interest rates, quantitative limits on credit expansion, and reserve requirements) were imposed for the purpose of preventing the over- or under-expansion of the money and bank credit supply. In addition, in many countries, including the UK and France, the state sought to direct the flow of available credit towards certain economic areas and activities, and away from others. Another policy concern related to the conditions of competition within the banking industry; the prevailing theories, however, had very little to do with the theories and policies of modern competition law. Thus, regulation used to be justified in terms of the avoidance of market concentration and monopolistic tendencies in the provision of banking services, either at the national or at the local level; today, however, we know that economies of scale in banking are not unlimited so as to raise the specter of a natural monopoly. The cartelization of financial markets was tolerated, however, if not actively encouraged. The total effect of regulated interest rates, credit controls, and limits on branching was to severely curtail opportunities for robust competition. In any event, "excessive" competition was discouraged, since it could undermine the profitability of banks and eventually lead to failures. As for the protection of depositors against the consequences of bank failure, this was addressed primarily through the extension of a safety net in the form of formal deposit insurance and/or the provision of implicit state guarantees in support of bank liabilities.[1]

Since then, both the economic conditions and the conceptual assumptions under which financial institutions operate, have changed dramatically. The last decades of the 20th century were marked by a great global wave of financial liberalization. Direct regulatory controls with monetary objectives almost disappeared. Their perverse economic side effects reduced their attractiveness as a policy tool, especially since their effectiveness was rapidly diminishing, due to market innovations as well as the gradual dismantling of the old system of exchange controls and its substitution by the almost unlimited freedom of movement of capital. By dispelling the notion that mandatory reserve requirements and other regulatory restrictions on the expansion of bank assets and liabilities are necessary (as distinct from helpful, or convenient) for the implementation of monetary policy and by insisting on the sufficiency of market-based approaches,[2] theoretical developments in the field of monetary economics have played a crucial role in this trend.

The new environment has, however, brought new priorities to the fore. In particular, from 1973 on, bank failures – a phenomenon unknown in the early post-War period – have become increasingly common, bringing to the center of regulatory attention the problem of excessive risk-taking by banks and its subsidization by the state through the provision of a safety net. The instability of the new financial environment eventually led to the global financial crisis in 2007-2009, turning financial regulation into a highly salient political issue.

At the same time, the growing financialization of the economy, also at the retail level, and the rising importance of capital markets – both as a conduit for the financing of the real economy and as a destination for household savings, either in the form of direct securities investments or indirectly through life assurance programs and collective investment schemes – have increased the economic significance and political salience of the non-banking segments of the financial industry. The protection of investors has thus emerged as an important policy priority, both *per se*, that is, as a form of protection for a large class of citizens, and as a means of promoting the growth of the relevant markets by building confidence in their integrity and by ensuring their smooth operation.

Under the pressure of these developments, over the past four decades, financial regulation has refocused on new objectives. Of course, the regulatory regime's existing objectives are not *ipso facto* optimal or even justi-

fiable. There is a close logical link between a public measure's objectives and the underlying justifications or reasons for adopting it.[3] Are these reasons valid? The matter is always open for discussion. An additional question is whether the objectives, as reflected in binding legal norms or in authoritative policy statements, are sufficiently coherent and whether they can properly inform the use of the regime's operational tools.

The Objectives of Financial Regulation as Set Out in Global Standards

Authoritative but rather vague descriptions of the general regulatory objectives can be found in reports of the global standard-setting bodies with responsibility for the three main financial sectors (banking, securities and insurance). By the late 1990s, the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), and the International Organization of Securities Commissions (IOSCO) had all produced high-level regulatory principles of world-wide applicability for their respective sectors.[4] The global sectoral standards may or may not embody a conceptually coherent view of the regulatory tasks but they certainly reflect, and at the same time unify and consolidate, the supervisory community's self-understanding of its function. Thus, they are a good starting point for an analysis of current official approaches to regulation.

Each set of principles approaches the question of regulatory objectives in a distinct way.

With regard to banking regulation, the BCBS's core principles require countries to specify clearly the responsibilities and objectives of the authorities involved in supervision and to equip them with sufficient powers for bank licensing, ongoing supervision, enforcement of compliance with applicable legal norms, and the taking of timely corrective actions to address safety and soundness concerns.[5] The commentary specifies that the responsibilities and objectives of each of the authorities involved in banking supervision should be clearly defined in legislation and publicly disclosed. It also defines the primary objective of banking supervision, which is "to promote the safety and soundness of banks and the banking system."[6] This turns out to be not simply a core objective but the overriding one, as it is further stated that, "if the banking supervisor is assigned broader responsibilities, these [should be] subordinate to the primary objective and [should] not conflict with it."[7] From this viewpoint, banking supervision is first and foremost (though not exclusively) about prudential controls.[8]

The BCBS principles recognize that "banking supervision" – that is, the specialist banking regulatory agency and its machinery – is only part of the arrangements necessary to ensure stability in financial markets. Other governance elements ("preconditions") are identified as being indispensable for the effectiveness of banking regulation in the narrow sense, namely: sound and sustainable macroeconomic policies; a well-established framework for financial stability policy formulation; a well-developed public infrastructure; a clear framework for crisis management, recovery and resolution; an appropriate level of systemic protection (or public safety net); and effective market discipline.[9] This opens the road to a broader conception of regulation, which is not confined to what the regulator is (tasked with) doing. Nonetheless, the BCBS's objectives are confined to the core (prudential and/or stability-related) tasks of banking regulators and do not include other bank-related objectives, such as competition, financial inclusion, the fight against financial crime, or the protection of bank clients in their capacity as consumers.

For the insurance sector, the overall objective, or task, of supervision is "to maintain fair, safe and stable insurance markets for the benefit and protection of policyholders."[10] In this case, it is the protection of direct stakeholders, specifically the policyholders, rather than any systemic consideration which holds center stage. For the remainder, it is recognized that the precise objectives may vary by jurisdiction, that the

supervisor's mandate may include several objectives, and that these may change over time according to the evolution of financial markets and prevailing conditions.[11] It is essential, however, that the applicable objectives be clearly defined.[12]

One should note that the interests of policyholders are at risk from the potential inability of insurance firms to honor their financial obligations (often of a very long-term nature). The preservation of the insurance firm's assets and its prudent financial management are necessary in order for the contracts to fulfil their intended economic role, but it is beyond the capacity of individual stakeholders to monitor the situation, and private law's remedies are inappropriate for this purpose. Policyholders are at risk, however, from the terms and manner of promotion of insurance contracts, the content and implications of which many of them may find difficult to understand and evaluate. Information asymmetries between insurers and their clients abound, and the possibility of mis-selling and sharp practices is ubiquitous. Accordingly, for the implementation of insurance regulation's objective, it is necessary for the regulatory regime to rely on prudential and conduct-of-business requirements in equal parts.

Ultimately, with regard to securities regulation, IOSCO identifies three objectives: protecting investors; ensuring that markets are fair, efficient, and transparent; and reducing systemic risk.[13] The most recent version of the IOSCO standard does not include further commentary but identical detailed explanations can be found in all previous editions.[14] Thus, in IOSCO's view:

> The three objectives are closely related and, in some respects, overlap. Many of the requirements that help to ensure fair, efficient and transparent markets also provide investor protection and help to reduce systemic risk. Similarly, many of the measures that reduce systemic risk provide protection for investors.[15]

Investor protection means protection from a variety of misleading, manipulative, or fraudulent practices, both by the intermediaries who provide professional services to investors and by issuers of financial instruments and by third-party participants in trading activities. IOSCO's discussion of the objectives points to all these issues emphasizing the need for disclosure and accounting requirements and equitable treatment of investors, while also noting that the capacity of individual investors to privately enforce such requirements may be limited.[16] Notably, the IOSCO text further refers to the need for capital requirements, as a way of protecting investors and counterparties from the risk of direct financial default.[17]

Ensuring that markets are fair, efficient, and transparent – especially by preventing improper trading practices and ensuring equal access for market users, the fair treatment of trade orders, and reliable price formation process based on transparency – can be seen as both another aspect of the previous objective of investor protection and as a means towards achieving the wider economic purposes of market building.[18] The latter, however, are not discussed explicitly.

Significantly, IOSCO recognizes the reduction of systemic risk as a parallel objective of securities regulation. In particular, it considers that securities intermediaries should be subject to capital and other prudential requirements, not only in order to protect individual counterparties but also to prevent systemic damage. Efficient and accurate clearing and settlement processes also contribute to this objective, which is further served by effective and legally secure arrangements for default handling.[19]

Regulatory Objectives in National Law: The Case of the UK

In contrast to the global standards, statements of the objectives of financial regulation in express and general terms are rarely found in national legislation. Instead, the objectives are often implied by the subject matter and structure of the regulatory scheme or, in cases where they are explicitly stated in the text, their significance is limited to the narrower set of issues covered by the particular enactment. This is not the case, however, in the UK, where the establishment in 2000 of a unified regulatory and supervisory system, operating on the basis of a single statute and a single regulatory agency for the entire financial industry, enabled the legislator to state authoritatively the overall regulatory objectives. Originally, four objectives were set out:

1. maintaining confidence in the UK's financial system ("market confidence objective");
2. promoting public understanding of the financial system, especially through the promotion of public awareness regarding the benefits and risks associated with different kinds of investment or other financial dealing and the provision of appropriate information and advice ("public awareness objective");
3. securing the appropriate degree of protection for consumers ("protection of consumers objective"); and
4. reducing the extent to which the financial sector may be used for purposes connected with financial crime ("reduction of financial crime objective").[20]

As a result of the UK's shift from a single financial regulator to a "twin peaks" model,[21] with separate prudential and conduct-of-business authorities (the Prudential Regulation Authority, or PRA, and the Financial Conduct Authority, or FCA), the objectives are currently set out separately for each authority. Accordingly, the PRA is entrusted with a general objective and a sectoral objective relating only to the insurance field, namely:

1. promoting the safety and soundness of the persons (primarily deposit-takers and insurance companies, but also certain investment firms) authorised by it ("general objective"); and
2. contributing to the securing of an appropriate degree of protection for those who are or may become policyholders ("insurance objective").[22]

Interestingly, the general objective has a clear systemic colouring, since it must be advanced primarily by "seeking to ensure that [regulated entities carry on their business] in a way which avoids any adverse effect on the stability of the UK financial system", as well as by "seeking to minimise the adverse effect that the failure of a [regulated entity] could be expected to have on the stability of the UK financial system".[23] For its part, the FCA is entrusted with one "strategic" and three "operational" objectives, which it must promote through its rule-making, guidance-giving, and policy-making actions.[24]

The former is extremely broad and imprecise, since it consists in:

1. ensuring that the relevant markets function well ("strategic objective").

The operational objectives include:

1. securing an appropriate degree of protection for consumers ("consumer protection objective");

2. protecting and enhancing the integrity of the UK financial system ("integrity objective"); and
3. promoting effective competition in the interests of consumers in financial markets ("competition objective").

The FSMA provides more detailed guidance on the meaning of the operational objectives. In particular, it explicates that the appropriate degree of protection of consumers is contingent on differences in the risk characteristics of various investments, differences between consumers in terms of their experience, expertise and expectations, consumers' needs for information and advice, etc.[25] This opens the road for distinctions, depending on the particular financial markets and products, and, in particular, for a differentiated treatment of retail and wholesale users of financial services. It is also specified that the "integrity objective" relates to a variety of more specific objectives, some of which are of a prudential and/or systemic nature, while others address issues of market organization and the fight against various types of criminal misconduct.[26] Thus, alongside the soundness, stability, and resilience of the UK financial system, its "integrity" is said to depend on the orderly operation of financial markets and the transparency of their price formation process as well as on the prevention of phenomena of market abuse or of the misuse of the financial system for purposes connected with "financial crime". The latter is defined to include any offense involving fraud or dishonesty, misconduct in, or misuse of information relating to a financial market, handling the proceeds of crime, or the financing of terrorism.[27] Lastly, the competition objective goes beyond typical questions of general competition law, to cover a much broader assessment of the efficiency and quality of the operation of the financial market. Relevant considerations, which can influence the FCA's rule- and policy-making, include the extent to which the market responds to informational and other needs of different categories of consumers, the access of consumers to financial services (including access by those facing social exclusion or economic deprivation), the ease with which consumers can move from one financial service provider to another, the ease with which new providers can enter the market, and the extent to which competition is encouraging innovation.[28]

General Objectives of European Financial Regulation

While regulatory objectives may be defined at the national level, as in the case of the UK, it remains true that, for all EU Member States, financial regulatory policy is increasingly determined at the supranational level.[29] It is at this level that the most important questions of regulatory policy are answered in the form of primary legislation (directives and regulations of the Parliament and the Council) and further elaborated by means of additional legal instruments. The latter include delegated and implementing measures of the Commission as well as "technical standards", which are formally adopted by the Commission but are drafted by the three European Supervisory Agencies (ESAs), that is, the European Banking Authority (EBA),[30] the European Insurance and Occupational Pensions Authority (EIOPA),[31] and the European Securities and Markets Authority (ESMA).[32] The ESAs were established in the wake of the global financial crisis as sector-based pan-European regulatory authorities.[33]

One can gain a bird's-eye perspective on the general objectives of the European regulatory approach by looking at the relevant provisions of the instruments establishing the ESAs. Interestingly, these define the objectives of all three authorities in almost identical terms.[34] This implies that, in the eyes of the European legislator, there are no categorical differences between the respective sectors, and that any distinctions are either superficial or dependent on questions of degree. Thus, the ESAs' common overarching objective is to promote the public interest by contributing to:

- the short, medium and long-term stability and effectiveness of the financial system.

More specifically, leaving aside the integration objectives (which are inherent in the European dimension of the regime and particular to it), they must contribute to:

- the integrity, transparency, efficiency and orderly functioning of financial markets;
- the establishment of equal conditions of competition;
- the appropriate regulation and supervision of financial institutions' risk-taking activities; and
- the enhancement of customer protection.[35]

Again, in all cases, systemic risk is singled out as a special cause for concern. It is thus stressed that, in carrying on their tasks, the ESAs must "pay particular attention to any systemic risk posed by financial institutions, the failure of which may impair the operation of the financial system or the real economy".[36]

The dominant role of systemic risk in post-crisis regulatory thinking is also evident in the emergence of a separate system of macro-prudential oversight of financial developments. It is now felt that prudential regulation and supervision as it applies to financial institutions individually can contribute to the preservation of systemic stability, but is not sufficient for this purpose.[37] The pre-crisis assumption was that the observance of prescribed standards of safety by individual financial institutions would ensure, in the aggregate, systemic stability. This was a fallacy of composition. In reality, the supervisory tools cannot guarantee the achievement of the macro-prudential objectives, because they can only detect idiosyncratic failures in particular institutions but are not suitable for identifying system-wide interactions and anticipating adverse macro-financial developments. For this reason, a special pan-European body, the European Systemic Risk Board (ESRB), has now been entrusted with the task of continuously monitoring and assessing systemic risks, taking into account both developments within the financial system and wider macroeconomic developments, and recommending measures for their containment.[38] The ESRB's macro-prudential objectives[39] overlap with the macro-prudential objectives of financial regulation, but its tasks are complementary to those of financial supervisors. From another perspective, one might wonder whether certain tools employed by macro-prudential regulators in Europe and elsewhere (such as reserve requirements, caps on loan-to-value ratios, especially for mortgage lending, etc.[40]) do not mark a blurring of the distinction between monetary, macroeconomic, and financial regulation as well as an unremarked return to controls with mixed objectives, as was the case in the early post-WWII period.[41]

Significantly, European policy statements tend to draw the positive implications of financial regulation for the economy's wider growth dynamics more starkly than the global and national texts discussed above. From this perspective, regulation may be seen less as a system of protection than as an indispensable form of market-building and, accordingly, as serving general economic policy objectives rather than objectives related to the interests (whether individual or collective) of the financial markets' immediate stakeholders. The domination of public objectives over private ones is evident in a recent Commission policy paper, in which the identified objectives of the Union's financial regulatory agenda (financial stability, financial integration, market integrity and confidence, and efficiency) are, in the final analysis, meant to serve a single "overriding objective" of a general economic nature: "to create a financial system that serves the economy and facilitates sustainable economic growth".[42]

Academic Classifications

Certain themes reappear with remarkable regularity in the official texts. For evident reasons, these are also highlighted in the academic literature. Thus, an influential study identifies systemic stability and consumer protection as the key objectives of financial regulation, with a third objective, namely competition, playing a

much more limited role.[43] Consumer protection, however, has a dual aspect: it relates, on the one hand, to the avoidance of the financial losses that a financial institution's failure may inflict on its clients (prudential objective) and, on the other, to the protection of clients against objectionable behavior on the part of the intermediaries (conduct-of-business objective).[44]

Evidently, both the prudential side of consumer protection and systemic stability require the observance of adequate standards of safety and soundness at the level of individual institutions. For this reason, regulators are bound to pursue both objectives largely in unison and through identical tools, including financial controls (such as capital adequacy and liquidity requirements, limits on large exposures, or rules on asset investment), corporate governance requirements, and, possibly, structural controls (or limits on the activities that institutions of a specific description may undertake). The two objectives thus define jointly the terrain of prudential regulation. This leaves us with two generic types of regulation and supervision:

- *prudential regulation*, focusing on the economic viability of financial institutions and aiming at (a) the personal protection of their clients against the risk of default; and (b) the protection of the financial system in general against the risk of contagious failures and/or large-scale financial crises (a purely public objective); and
- *conduct-of-business regulation*, aiming at the compliance of financial institutions (especially securities and insurance firms) with acceptable standards of behavior in their bilateral relationships with their clients.[45]

The distinction between the two types of regulation is highly important for the architecture of the financial regulatory system. The best-known proposal in this regard is Michael Taylor's "twin peaks" model, according to which financial regulation must be organized in two pillars, based on the main objectives and tools: a prudential supervisory agency for banks and a single conduct-of-business agency.[46] At first, Australia (1996–2001)[47] and, more recently, the UK (2012) implemented variations of this model.[48] For Europe as a whole, the idea was voiced in the de Larosière Report,[49] but has not yet been followed.

In the prudential field, one could still distinguish between the prudential regulation of institutions whose potential failure is presumed to have systemic implications (in particular, banks), to which both objectives apply, and the prudential regulation of other institutions (such as most securities intermediaries and insurance companies) whose objective is limited to the protection of their immediate clients and counterparties. This distinction may have implications for the differentiation of the regulatory objectives and approaches across sectors. The traditional assumption is that banks, due to their specific financial structure and/or mutual links, raise particular systemic concerns.[50] In contrast, while insurance companies (especially life assurance companies) require strict prudential controls for the protection of policyholders, they are of little systemic importance. The same applies to securities firms, which may not even require substantial prudential controls at the individual level, because they do not issue liabilities to retail clients. However, the situation may have changed. Financial walls between the sectors have broken down as a result of the emergence of financial conglomerates. The increasingly strong interconnections between banks and other intermediaries, especially through complex securities financing transactions, suggest that the sectors can no longer be distinguished on this basis.

The distinction may, however, serve as a criterion for the allocation of supervisory tasks. Prudential responsibilities could, accordingly, be assigned to a different authority for each category.[51] Still, it is interesting to note that the recent emergence of macro-prudential oversight weakens this distinction. Macro-prudential oversight has solely public (systemic) objectives but, due to its focus on concentrations of exposures across financial institutions, interconnectedness, and vulnerabilities to common shocks, the scope of its assessments cannot be limited to the "systemically significant" institutions but must cover all segments of the

financial industry. Moreover, some of its tools apply generally – even though banks are bound to be affected more immediately than other intermediaries.

As for conduct-of-business regulation, it might be useful to treat it separately from another broad category of regulatory interventions, namely the regulation of organized financial markets, including payment and settlement systems, and market-based transactions. The former focuses on the intermediary-client relationship. In contrast, *market regulation* relates to the organization of multilateral markets and exchanges, the specification of transactional procedures and traded products, their membership rules, the oversight of members' activities, and the policing of trading rules, etc.; and its objectives are more diverse and, in a certain sense, wider. The primary objective of conduct-of-business regulation is the individual protection of clients. One could interpret market regulation in related terms, as a form of collective consumer protection, but this would not tell the whole story. The existence of organized, standardized, and continuous financial markets has broader implications. In this sense, market regulation is primarily about market-building and economic efficiency.[52] These are public-interest objectives.[53] The vague terms typically used to define the objectives of market regulation (such as fairness, integrity, efficiency, or orderly operation) obfuscate its forward-looking, economic-policy-based elements and weak connection to the narrower private interests of investors.[54]

Beyond the Core Objectives

It should be noted that the official definitions of regulatory objectives discussed above, just like the associated academic debates, relate to the mandate, tasks, and organizational structure of the main financial supervisory agencies, namely those responsible for the licensing and continuous supervision of regulated enterprises and markets. The objectives of financial regulation may appear in a different light if one extends the discussion to cover the complete network of legal norms and regulatory interventions affecting the financial sector.

In a very broad sense, financial regulation would therefore include the "regulation" of contractual or transactional behavior, even when this relies on civil liabilities or criminal prohibitions rather than administrative enforcement.[55] Even within the confines of public law,[56] however, certain matters may fall outside the purview and administrative responsibility of the main agencies. And in many cases, relevant intervention will not be part of an overarching regime but will take the form of issue-specific enactments and enforcement regimes, with discrete, special objectives.

In particular, the financial sector is not exempt from the application of competition law, a horizontal policy.[57] In most market segments, competition is fierce but several supporting systems (for instance, payment and clearing systems, credit card networks, etc.) are characterized by network economies and/or strong economies of scale, thus raising competition issues (prevention of abuse of a dominant position or anticompetitive agreements, provision of rights of access, system interoperability). Merger controls may also be relevant in connection with larger intermediaries. The most important concern, however, may be state aid, including that in the form of bailouts for failing banks.[58]

It is also common practice to establish special administrative enforcement tools in support of interests of a primarily private nature. This is true for a variety of cases, such as consumer credit and payment services in the banking field. Social regulation makes its appearance more rarely, for instance in the form of mandatory provision of basic transactional account services by banks as a means of combating financial exclusion.[59]

Finally, the regulatory regime may be put in the service of anti-crime policy. The example of the UK, where the fight against financial crime is included in the objectives of the main regulatory agencies, has already been

mentioned. Yet regulatory requirements against money laundering bind financial institutions the world over.[60] In this case, the regulatory regime supports the enforcement of criminal law without, however, determining its content. Of course, more often than not, the relationship will take the opposite course, meaning that various duties created under the regulatory regime will be enforced by way of criminal penalties. A conspicuous example is the criminal enforcement of the European market abuse regime.[61]

When all these facets are taken into account, it becomes clear that the objectives of financial regulation are neither clear-cut nor static. The identification of core objectives has a certain usefulness. In particular, it is important for determining the regulatory system's general architecture. It can also support coherent policy-making and inform individual supervisory decisions in the core areas. But it cannot delimit the field of financial regulation or prevent the grafting of new purposes and directions onto its evolving framework.

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1. On 1960s regulatory thinking, see A.H. Meltzer, 'Major Issues in the Regulation of Financial Institutions', *Journal of Political Economy*, vol. 75, 1967, pp. 482–501. On UK banking policies in the early post-WWII period (1945–70), see C. Hadjiemmanuil, *Banking Regulation and the Bank of England,* LLP, London, 1996, pp. 3–26.↩
2. See M. Goodfriend and R.G. King, 'Financial Deregulation, Monetary Policy, and Central Banking', *Federal Reserve Bank of Richmond Economic Review*, vol. 74:3 (May-June 1988), pp. 4–8.↩
3. For present purposes, it is unnecessary to delve into the distinction between public justification of regulatory measures (that is, their putative economic rationale and/or the rationalizations offered in their support) and the private reasons of their promoters and legislators (that is, their motives for working towards the enactment or implementation of such measures). See, e.g., G.J. Benston, *Regulating Financial Markets: A Critique and Some Proposals*, AEI Press, Washington, D.C., 1999, pp. 7–11. Public choice theory teaches that regulatory intervention frequently serves, not the general public interest in market efficiency, economic growth, minimization of risk and the like, but the narrower private interests of its promoters. Since the present discussion is merely intended to describe the stated objectives of the current system of financial regulation, it is sufficient to assume that the officially proclaimed objectives are true ones, and not a sham.↩
4. All are included in the Financial Stability Board's list of 14 'Key Standards for Sound Financial Systems', http://www.financialstabilityboard.org/what-we-do/about-the-compendium-of-standards/key_standards/.↩
5. BCBS, 'Core Principles for Effective Banking Supervision', Sept. 2012, p. 10.↩
6. ibid., p. 21.↩
7. ibid.↩
8. In the original version of BCBS principles, the same idea was expressed in more nuanced terms. The systemic dimension of prudential regulation was emphasized, but linked to certain complementary considerations, such as the preservation of confidence, the protection of depositors, and the promotion of market discipline: "the key objective of supervision is to maintain stability and confidence in the financial system, thereby reducing the risk of loss to depositors and other creditors; supervisors should encourage and pursue market discipline by encouraging good corporate governance . . . and enhancing market transparency and surveillance." It was further stated that "[b]anking supervision should foster an efficient and competitive banking system that is responsive to the public's need for good quality financial services at a reasonable cost." In addition, the limits of prudential regulation were recognized, by noting that "there is a trade-off between the level of protection that supervision provides and the cost of financial intermediation. The lower the tolerance of risk to banks and the financial system, the more intrusive and costly supervision is likely to be, eventually having an adverse effect on innovation and resource allocation." BCBS, 'Core Principles for Effective Banking Supervision (Basel Core Principles)' (Sept. 1997), pp. 9–10.↩
9. BCBS, 'Core Principles . . .', Sept. 2012, pp. 14–16. Specifically on the deposit insurance component of the safety net, see International Association of Deposit Insurers (IADI), 'IADI Core Principles for Effective Deposit Insurance Systems', Nov. 2014.↩
10. IAIS, 'Insurance Core Principles, Standards, Guidance and Assessment Methodology', 19 Oct. 2013, p. 16. Initially, efficiency was also mentioned; IAIS, 'Insurance Core Principles', Principles No. 1, Oct. 2000, p. 4.↩
11. IAIS, 'Insurance Core Principles, Standards, . . .', 19 Oct. 2013, p. 16.↩
12. ibid., p. 15.↩
13. IOSCO, 'Objectives and Principles of Securities Regulation', June 2010, p. 3.↩
14. Originally, in IOSCO, 'Objectives and Principles of Securities Regulation', Sep. 1998, pp. 6–8.↩
15. ibid., p. 6.↩
16. ibid., pp. 6–7.↩
17. ibid.↩
18. ibid., pp. 7–8.↩
19. ibid., p. 8.↩
20. Financial Services and Markets Act 2000 (FSMA), as originally enacted, ss. 2–6.↩

21. FSMA, as amended by the Financial Services Act 2012, pt. 2. On the "twin peaks" model, see below, text and fn. 46–49.↩
22. FSMA, as amended, ss. 2B–2C.↩
23. FSMA, as amended, s. 2B(3).↩
24. FSMA, as amended, ss. 1B–1E.↩
25. FSMA, as amended, s. 1C(2).↩
26. FSMA, as amended, s. 1D(2).↩
27. FSMA, as amended, s. 1H(3). In the original version of the FSMA, s. 6(3), the definition of financial crime did not include the financing of terrorism.↩
28. FSMA, as amended, s. 1E(2).↩
29. In contrast, front-line supervision remains a competence of the several Member States. In particular, each Member State is required to entrust the administrative responsibility for the licensing and continuous supervision of each category of financial institutions to a supervisory agency ("national competent authority"). Tasks are divided horizontally between the various countries' authorities in accordance with the principle of "home-country control", so that the supervisory responsibility for each financial institution belongs to the country the of which that institution happens to have its seat and center of operations. Of course, due to the creation of the Banking Union, since 4 November 2014, the supervision of all banks ("credit institutions") in the euro area has passed to a Single Supervisory Mechanism (SSM), within which the central role belongs to a European institution, the ECB; Council Regulation (EU) No. 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, O.J. L 287, 29.10.2013, pp. 63–89.↩
30. Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, O.J. L 331, 15.12.2010, pp. 12–47.↩
31. Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, O.J. L 331, 15.12.2010, pp. 48–83.↩
32. Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, O.J. L 331, 15.12.2010, pp. 84–119.↩
33. The three agencies are called "supervisory" (ESAs), but this is a misnomer, since they have very limited supervisory responsibilities and their actual tasks are primarily of a regulatory nature.↩
34. Regulation 1093/2010, rec (11) and Art. 1(5); Regulation 1094/2010, rec (10) and Art. 1(6); and Regulation 1095/2010, rec (11) and Art. 1(5).↩
35. Regulation 1093/2010, Art. 1(5), first subpar.; Regulation 1094/2010, Art. 1(6), first subpar.; and Regulation 1095/2010, Art. 1(5), first subpar.↩
36. Regulation 1093/2010, Art. 1(5), third subpar.; Regulation 1094/2010, Art. 1(6), third subpar. (with reference to "financial market participants," instead of "financial institutions"); and Regulation 1095/2010, Art. 1(5), third subpar.↩
37. A. Crockett, 'Marrying the Micro- and Macro-Prudential Dimensions of Financial Stability', speech at the Eleventh International Conference of Banking Supervisors, Basel, 20-21 September 2000, http://www.bis.org/speeches/sp000921.htm; C. Borio, 'Towards a Macroprudential Framework for Financial Supervision and Regulation?', *BIS Working Paper* No 128, Feb. 2003.↩
38. Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, O.J. L 331, 15.12.2010, pp. 1–11, rec. (1). See L. Bini Smaghi, 'Going Forward – Regulation and Supervision after the Financial Turmoil', speech at the 4th International Conference of Financial Regulation and Supervision, 'After the Big Bang: Reshaping Central Banking, Regulation and Supervision', Bocconi University, Milan, 19 June 2009, http://www.bis.org/review/r090623e.pdf.↩
39. Regulation 1092/2010, rec. (10) and Art. 3(1).↩
40. Macro-prudential measures may take the form either of add-ons to normal prudential requirements, in an attempt to enhance the resilience of financial institutions, or of independent interventions, such as quantitative restrictions on credit expansion, reserve requirements, caps on loan-to-value ratios, levies on particular activities, etc., which seek to dampen the financial cycle. See S. Claessens, 'Overview of Macroprudential Policy Tools', *IMF Working Paper* No. WP/14/214, Dec. 2014.↩
41. Cf. IMF, 'The Interaction of Monetary and Macroprudential Policies', 29 Jan. 2013, https://www.imf.org/external/np/pp/eng/2013/012913.pdf.↩
42. Commission Staff Working Document, 'Economic Review of the Financial Regulation Agenda', SWD(2014) 158 final, 15 May 2014, p. 8, pp. 49–50.↩
43. C. Goodhart, P. Hartmann, D. Llewellyn, L. Rojas-Suarez and S. Weisbrod, *Financial Regulation: Why, How And Where Now?*, London: Routledge, 1998, pp. 2–9.↩
44. ibid. A variation of this classification appears in D. Llewellyn, 'The Economic Rationale for Financial Regulation', *FSA Occasional Paper* No. 1, Apr. 1999, 9–12, where the objectives are said to include systemic stability, the safety and soundness of financial institutions, and the protection of the consumer. This classification is not convincing, because Llewellyn explicitly considers the prudential objective of avoiding failure to be a subcategory of consumer protection. If so, the second objective is redundant: safety and soundness may form the prudential leg of consumer protection or, in relation to significant institutions, it may simultaneously serve the systemic and the consumer protection objectives, but it can never have a separate purpose. This leaves only two overarching objectives: fostering financial stability and protecting the customers of financial services. See, e.g., 'Report of the High-Level Group on Financial Supervision in the EU', 25 Feb. 2009 ('de Larosière Report'), p. 13.↩
45. See Llewellyn, op. cit. (fn. 44), pp. 9–10.↩
46. M. Taylor, "'Twin Peaks": A Regulatory Structure for the New Century', *CSFI Paper* No. 20, Center for the Study of Financial Innovation, London, Dec. 1995. This division of supervisory work is also consistent with the partial collapse (due to deregulation, financial innovation, and the emergence of multifunctional financial groups or "conglomerates") of legal and market-based barriers, which, in the past, kept the three financial sectors and their respective supervisors segregated. See also C. Hadjiemmanuil, 'Institutional Structure of Financial Regulation: A Trend towards "Megaregulators"?, *Yearbook of International Financial & Economic Law*, vol. 2000-2001, pp. 127–190.↩
47. Australian Prudential Regulation Authority Act 1998; Australian Securities and Investments Commission 2001.↩

48. Financial Services Act 2012.↩
49. Op. cit. (fn. 44).↩
50. See E.A.J. George, 'Are Banks Still Special?', *Bank of England Quarterly Bulletin*, vol. 37 (1997), pp. 113–118.↩
51. See, e.g., Goodhart et al., op. cit. (fn. 43), pp. 159–168.↩
52. R. Baldwin, M. Cave and M. Lodge, *Understanding Regulation: Theory, Strategy, and Practice*, 2nd ed, Oxford University Press, Oxford, 2012, p. 3, note that, while regulation is often thought of as a means of preventing undesirable activities, it may well have an enabling or facilitating purpose, e.g., "where the airwaves are regulated so as to allow broadcasting operations to be conducted in an ordered fashion, rather than left to the potential chaos of an uncontrolled market."↩
53. Specifically, with regard to market infrastructures, systemic risks are an evident policy priority. Such risks, however, are better addressed at the technical and contractual design level than by way of continuous supervision. See Committee on Payment and Settlement Systems and IOSCO Technical Committee, 'Principles for Financial Market Infrastructures', Apr. 2012.↩
54. Nonetheless, the instrumentalist objectives of market regulation are made clear in the Commission Staff Working Document, op. cit. (fn. 42), and, especially, in the Commission Green Paper, 'Building a Capital Markets Union', COM(2015) 63 final, 18 Feb. 2015.↩
55. For various definitions of regulation, ranging from the exceedingly wide to the rather narrow, see R. Baldwin, M. Cave and M. Lodge, *Understanding Regulation: Theory, Strategy, and Practice*, 2nd ed, Oxford University Press, Oxford, 2012, pp. 2–3; and the following entries in N.J. Smelser and P.B. Baltes (eds.), *International Encyclopedia of the Social & Behavioral Sciences*, Elsevier Science, Oxford, 2001: D.E.M. Sappington, 'Regulation, Economic Theory of', p. 12951 (regulation as the act of controlling or directing by a rule, principle, or method, thus encompassing many forms of control by a variety of actors); S. Sterett, 'Regulation and Administration', p. 12945 (regulation as the effort to shape significant institutions to serve some social concerns that might not be taken into account in the ordinary process of doing business, or the imposition of legal orders on those engaged in economic activity); N.L. Rose, 'Regulation, Political Economy of', p. 12967 (regulation as use of the coercive power of the state to alter firms' pricing, entry, production, investment, or product choice decisions).↩
56. That is, if regulation is defined in a narrower sense as the "sustained and focused control exercised by a public agency over activities that are valued by a community;" P. Selznick, 'Focusing Organizational Research on Regulation', in R.G. Noll (ed.), *Regulatory Policy and the Social Sciences*, Berkeley: University of California Press, Berkeley, 1985, p. 363.↩
57. The applicability of European completion law to banking institutions was recognized in Case 172/80, *Gerhard Züchner* v. *Bayerische Vereinsbank A.G.* [1981] ECR 2021.↩
58. For the European policy on the matter, see now 'Communication from the Commission on the application from 1 August 2013 of State aid rules to support measures in favour of banks in the context of the financial crisis ("Banking Communication")' (2013/C 216/01), OJ 2013 C216/1.↩
59. See C.V. Gortsos, 'A Primer on Financial Inclusion', contribution to a Festschrift in honor of Stelios Perakis, forthcoming (2016).↩
60. See Financial Action Task Force (FATF), 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations' (Feb 2012).↩
61. Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive), O.J. L 173, 12.06.2014, pp. 179–189.↩

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