European banking regulation: When there’s strength in union

By Céline Antonin, Sandrine Levasseur and Vincent Touzé

At a time when America, under the impulse of its new president Donald Trump, is preparing to put an end to the banking regulation adopted in 2010 by the Obama administration [1], Europe is entering a third year of the Banking Union (Antonin et al., 2017) and is readying to introduce new prudential regulations.

What is the Banking Union?

Since November 2014, the Banking Union has established a unified framework that generally aims to strengthen the financial stability of the euro zone [2]. It has three specific objectives:

- To guarantee the robustness and resilience of the banks;
- To avoid the need to use public funds to bail out failing banks;
- To harmonize regulations and ensure better regulation and public supervision.

This Union is the culmination of lengthy efforts at regulatory coordination following the establishment of the free movement of capital in Article 67 of the Treaty of Rome (1957): “During the transitional period and to the extent necessary to ensure the proper functioning of the common market, Member States shall progressively abolish between themselves all restrictions on the movement of capital belonging to persons resident in Member States and any discrimination based on the nationality or the place of residence of the parties or on the place where such capital is invested.”

The Banking Union was born out of the crisis. While the Single European Act of 1986 and the 1988 EU Directive allowed the free movement of capital to take effect in 1990, the financial crisis of 2008 revealed a weakness in Europe's lack of coordination in the banking sphere.

Indeed, the lessons of the financial crisis are threefold:

- A poorly regulated banking and financial system (the American case) can be dangerous for the proper functioning of the real economy, in the country but also beyond;
- Regulation and supervision that is limited to a national perspective (the case of European countries) is not effective in a context where capital movements are globalized and numerous financial transactions are conducted outside a country's borders;
- The banking and sovereign debt crises are linked (Antonin and Touzé, 2013b): on the one hand, bailing out banks by using public funds increases the public deficit, which weakens the State, while the problematic sustainability of the public debt weakens the banks that hold these debt securities in their own funds.

The Banking Union provides a legal and institutional framework for the European banking sector, based on three pillars:

(1) The European Central Bank (ECB) is the sole supervisor of the major banking groups;

(2) A centralized system for the regulation of bank failures includes a common bailout fund (the Single Resolution Fund) and prohibits the use of national public funding;

(3) By 2024, and subject to the definitive agreement of all the members of the Banking Union, a common fund must ensure that bank deposits held by European households are guaranteed for up to 100,000 euros, with deposits guaranteed by each State from 2010.

The Banking Union is not fully completed. The adoption of the third pillar is lagging behind due to the difficulties being experienced by the banks in Greece and Italy, which have not been entirely resolved due to the continuing risk of default on existing loans. The European deposit guarantee “will have to wait until sufficient progress has been made to reduce and harmonize banking risks” (Antonin et al., 2017).

Towards stronger regulation and greater financial stability

The Banking Union has come into existence alongside the new Basel III prudential regulations that have been adopted by all Europe’s banks since 2014 following a European directive and regulation. The Basel III regulations require banks to maintain a higher level of capital and liquidity by 2019.

The establishment of the Banking Union coupled with the ECB’s highly accommodative monetary policy has helped to put an end to the crises in sovereign debt and the European banking sector. The ECB’s massive asset purchase programme is helping to improve the balance sheet structure of indebted sectors, which is reducing the risk of a bank default. Today, the Member States, business and households are borrowing at historically low interest rates.

The establishment of a stable, efficient European banking and financial space requires further steps to regulate both a unified European capital market and the banks’ financial activities (Antonin et al., 2014).

The main objective of a union of the capital markets is to provide a common regulatory framework to facilitate the financing of European companies by the markets and to channel the abundant savings in the euro area towards long-term investments. This would allow for a more coherent and potentially more demanding level of regulation of the issue of financial securities (equities, bonds, securitization operations).

The Banking Union could also be strengthened by drawing on the 2014 Barnier proposal for a high level of separation of deposit and speculative activities. The ECB’s unique supervisory role (pillar 1) enables it to ensure that speculative activities don’t disrupt normal business. This supervisory role could be extended to embrace all financial activities, including the infamous credit system of “shadow banking” that parallels conventional lending. The separation of activities also strengthens the credibility of the common bail-out funds (pillar 2) and guarantee funds (pillar 3). Indeed, it is becoming more difficult for banks to be too big, which reduces the risk of bankruptcies that are costly for savers (internal bailout and limits on common funds).

Defending a European model of banking and financial stability

At a time when the United States is currently abandoning the more stringent regulation of its banks in an effort to boost their short-term profitability, Europe’s Banking Union is a remarkable defensive tool for preserving and strengthening the development of its banks while demanding that they maintain a high level of financial security.

While the US courts are not hesitating to impose heavy fines on European banks [3], and China’s major banks now occupy four out of the top five positions in global finance (Leplâtre and Grandin de l’Eprevier, 2016), a coordinated approach has become crucial for defending and maintaining a stable and efficient European banking model. In this field, a disunited Europe could seem weak even while its surplus savings make it a global financial power. The crisis has of course hurt many European economies, but we must guard against the short-term temptations of an autarkic withdrawal: a European country that isolates itself becomes easy prey in the face of a changing global banking system.

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[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act adopts the Volcker rule “which prohibits banks from ‘playing’ with depositors’ money, which led to a virtual ban on the proprietary speculative activities of banking entities as well as on investments in hedge funds and private equity funds” (Antonin and Touzé, 2013a).

[2] The Banking Union is compulsory for euro area countries and optional for the other countries.

[3] Recent events have shown that US justice can prove to be extremely severe as large fines are imposed on European banks: 8.9 billion dollars for BNP Paribas in 2014, and 5.3 billion for Credit Suisse and 7.2 billion for Deutsche Bank in 2016.

The secular stagnation equilibrium

By Gilles Le Garrec et Vincent Touzé

The economic state of slow growth and underemployment, coupled with low inflation or even deflation, has recently been widely discussed, in particular by Larry Summers, under the label of “secular stagnation”. The hypothesis of secular stagnation was expressed for the first time in 1938 in a speech by A. Hansen, which was finally published in 1939. Hansen was worried about insufficient investment and a declining population in the United States, following a long period of strong economic and demographic growth.

In a *Note by the OFCE (no. 57 dated 26 January 2016* [in

French]), we studied the characteristics and dynamics of a secular stagnation equilibrium.

A state of secular stagnation results when an abundance of savings relative to demand for credit pushes the “natural” real interest rate (what is compatible with full employment) below zero. But if the real interest rate permanently remains above the natural rate, then the result is a chronic shortage of aggregate demand and investment, with a weakened growth potential.

To counter secular stagnation, the monetary authorities first reduced their policy rates, and then, having reached the zero lower bound (ZLB), they implemented non-conventional policies called quantitative easing. The central banks cannot really force interest rates to be very negative, otherwise private agents would have an interest in keeping their savings in the form of banknotes. Beyond quantitative easing, what other policies might potentially help pull the economy out of secular stagnation?

To answer this crucial question, the model developed by Eggertsson and Mehrotra in 2014 has the great merit of clarifying the mechanisms behind a fall into long-term stagnation, and it is helping macroeconomic analysis to update its understanding of the multiplicity of equilibria and the persistence of the crisis. Their model is based on the consumption and savings behaviour of agents with a finite lifespan in a context of a rationed credit market and nominal wage rigidity. As for the monetary policy conducted by the central bank, this is set at a nominal rate using a Taylor rule.

According to this approach, secular stagnation was initiated by the 2008 economic and financial crisis. This crisis was linked to high household debt, which ultimately led to credit rationing. In this context, credit rationing leads to a fall in demand and excess savings. Consequently, the real interest rate falls. In a situation of full employment, if credit tightens sharply, the equilibrium interest rate becomes negative, which leaves conventional monetary policy toothless. In this case, the economy plunges into a lasting state of underemployment of labour, characterised by output that is below potential and by deflation.

In the model proposed by Eggertsson and Mehrotra, there is no capital accumulation. As a result, the underlying dynamic is characterized by adjustments without transition from one steady state to another (from full employment to secular stagnation if there's a credit crisis, and vice versa if credit doesn't tighten much).

To extend the analysis, we considered the accumulation of physical capital as a prerequisite to any productive activity (Le Garrec and Touzé, 2015.). This highlights an asymmetry in the dynamics of secular stagnation. If the credit constraint is loosened, then capital converges on its pre-crisis level. However, exiting the crisis takes longer than entering it. This property suggests that economic policies used to fight against secular stagnation must be undertaken as soon as possible.

There are a number of lessons offered by this approach:

- To avoid the ZLB, there is an urgent need to create inflation while avoiding speculative asset "bubbles", which could require special regulation. The existence of a deflationary equilibrium thus raises the question of the appropriateness of monetary policy rules that are overly focused on inflation.
- One should be wary of the deflationary effects of policies to boost potential output. The right policy mix is to support structural policies with a sufficiently accommodative monetary policy.
- Cutting savings to raise the real interest rate (e.g. by facilitating debt) is an interesting possibility, but

the negative impact on potential GDP should not be overlooked. There is a clear trade-off between exiting secular stagnation and depressing potential GDP. One interesting solution could be to finance infrastructure, education or R&D (higher productivity) through government borrowing (raising the real equilibrium interest rate). Indeed, an aggressive investment policy (public or private) funded so as to push up the natural interest rate can meet a dual objective: to support aggregate demand and to develop the productive potential.

Banking Europe: Strength in the Union?

By Céline Antonin and Vincent Touzé

On 4 November 2014, the European Central Bank became the single supervisor of banks in the euro zone. This was the first step in the banking union.

The economic and financial crisis that started in 2007 has exposed several European weaknesses:

1. The national bank markets, though seemingly compartmentalized, proved to be highly interdependent, as was seen in the high level of propagation-contamination;
2. There was often a lack of coordination in the national support provided;
3. Given the context of high public indebtedness, State

support for the bank system led to a strong correlation between bank risk and sovereign risk;
4. The absence of fiscal transfer mechanisms strongly limited European solidarity.

In 2012, the idea of a banking union arose out of a triple necessity: to break the link between the banking crisis and the sovereign debt crisis by enabling the direct recapitalization of troubled banks through the European Stability Mechanism; to prevent bank runs; and to prevent the euro zone banking markets from fragmenting.

The banking union is being built on three pillars: a single supervision mechanism (SSM); a single resolution mechanism (SRM), with a resolution fund and a bail-in process; and a single deposit guarantee system with a guarantee fund.

The banking union sets out new solutions. Nevertheless, grey areas remain, and the European solidarity provided by the banking union could prove insufficient to deal with major shocks.

The latest *Note de l'OFCE* (no. 46 of 18 November 2014) reviews the context surrounding the establishment of the banking union and takes stock of the advantages and limitations of the progress made in constructing the union. This Note was produced as a special study entitled "Comment lutter contre la fragmentation du système bancaire de la zone euro?", [How can the fragmentation of the euro zone banking system be fought?] *Revue de l'OFCE*, no. 136 (2014).

Changes in taxation in Europe from 2000 to 2012: A few analytical points

By Céline Antonin, Félix de Liège and Vincent Touzé

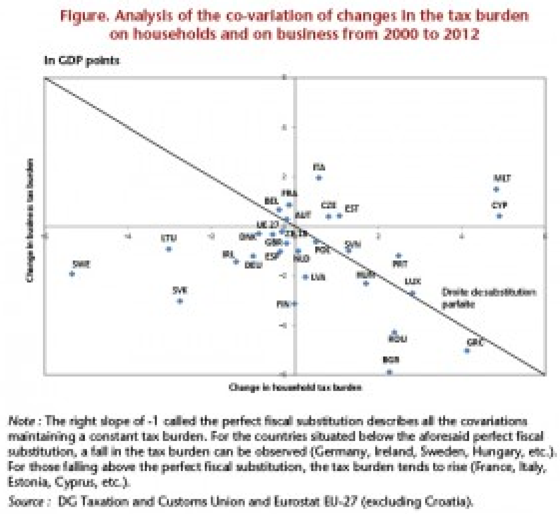
There is great diversity to Europe's tax systems, reflecting the choices of sovereign States with differentiated destinies. Since the Treaty of Rome, the Member States have steadily refused to give up national authority over taxation, with the exception of a minimum level of coordination on value-added tax (VAT). Europe now faces a real risk of a rise in non-cooperative tax strategies, with each country seeking to improve its economic performance at the expense of the others. This kind of aggressive strategy is being fuelled by two factors: on the one hand, a drive for competitiveness (fiscal devaluation), aimed at reducing the tax burden on businesses so as to improve price competitiveness; and on the other, a drive for fiscal advantage, aimed at luring the rarest factors of production to the national territory. On a macroeconomic level, it is difficult to distinguish clearly between these two factors. However, one way of understanding how the European states have improved their position may be to look at how the tax burden on business has evolved in comparison with the burden on households.

OFCE Note no. 44 describes changes in the compulsory tax burden (TPO) in Europe. It is based on statistics from *Tendances de la fiscalité*, which is published jointly by Eurostat and the European Commission's Taxation and Customs Union Directorate. These statistics have the advantage of providing harmonized data on tax rates, with a breakdown of the tax base (capital, labour, consumption) and the type of paying agent (household, business, individual entrepreneur).

We study the period 2000-2012: it is of course always difficult to separate trends in taxation from cyclical adjustments, especially as budget constraints tighten. Nevertheless, the 2000-2012 period should be sufficiently long to reveal changes of a structural nature.

Based on these data, we first highlight contrasting trends in the tax burden in the European Union, which can be broken down into four phases: two phases of rises (between 2004 and 2006 and since 2010) and two phases of reductions (before 2004 and from 2006 to 2010), which is linked in particular with cyclical factors. In addition to this common dynamic, we can see non-convergent adjustments made by the European countries in the taxation of households and the taxation of business (see graph). We then focus on possible tax substitutions between payroll taxes and consumption, and between payroll taxes and employee contributions.

Over the period 2000-2012, it is difficult to talk about tax competition at a global level, even though there was a slight decrease in the average tax burden within the European Union and very specific moves in this direction by certain countries. While some countries have definitely reduced the tax burden on business (UK, Spain, Germany, Ireland, Sweden, etc.), others have increased it (Belgium, France, Italy, etc.). However, in the long-term, it would seem difficult to maintain such a high level of tax diversity. At a time when European integration is being intensified, greater tax harmonization seems more necessary than ever.



Regulating the financial activities of Europe's banks: a fourth pillar for the banking union

By Céline Antonin, Henri Sterdyniak and Vincent Touzé

At the impetus of EU Commissioner Michel Barnier, on 29 January 2014 the European Commission proposed new regulations aimed at limiting and regulating the commercial activities of banks "of systemic importance", that is to say, the infamous "too big to fail" (TBTF).

Regulating proprietary activities: a need born of the crisis

Due to banks' particular responsibility in the 2008 economic and financial crisis, many voices have been raised demanding stricter regulation of their financial activities. This has led to two approaches: prohibition and separation.

In the United States, the “Volker rule” adopted in late 2013 prohibits banks from engaging in any proprietary trading activities as well as taking holdings of greater than 3% in hedge funds. The banks can nevertheless continue their own market-making and hedging activities. Obviously, this rule does not prohibit banks from investing their own funds in financial assets (equities, government and corporate bonds). The purpose of the rule is to prevent a bank from speculating against its customers and to minimize the use of the leveraging that proved so costly to the financial system (banks using their clients’ money to speculate on their own behalf).

The European approach is based on the Vickers Report (2011) for the United Kingdom and the Liikanen Report (2012) for the European Union. These reports recommend some separation between traditional banking activities on behalf of third parties (management of savings, provision of credit, simple hedging operations) and trading activities that are for the bank’s own account or bear significant risk, although the activities can be maintained in a common holding company. The Vickers Report proposes isolating traditional banking activities in a separate structure. In contrast, according to the Liikanen report it is proprietary trading and large-scale financial activities that need to be isolated in a separate legal entity.

The idea of separating banking activities is not new. In the past, many countries enacted legislation to separate commercial banks from investment banks (Glass-Steagall Act in 1933 in the United States, the 1945 Banking Act in France). These laws were revoked in the 1980s due to a growing belief in the superiority of the “universal bank” model, which allows a single bank to offer a full range of financial services to individuals (loans, deposits, simple or complex financial investments) and especially to business (loans, hedging, issuance of securities, market-making activities). The crisis exposed two defects in this model: the losses incurred by a bank on its proprietary trading and other activities on the markets led to a loss in its equity capital, thereby calling into question the bank's lending activities and requiring the State to come to its rescue in order to ensure that bank credit didn't dry up. The universal bank, backed by the State's guarantee and sitting on a mass of deposits, did not have sufficient vigilance over its proprietary trading activities (as was shown by the cases of Kerviel, Picano-Nacci and Dexia).

An ambitious European regulatory proposal

This proposal for bank reform is coming in a situation that is complicated by several factors:

1) The Basel 3 regulations currently being adopted already impose strict rules on the quality of counterparties of the equity capital. Speculative activities must be covered by substantial levels of common equity.

2) The banking union being developed provides that in case of a crisis creditors and large deposit holders could be called upon to save a bank facing bankruptcy (principle of "bail in"), so that taxpayers would not be hit (end of "bail out"). But there are doubts about this mechanism's credibility, which could cause a domino effect in the event that a TBTF bank faces bankruptcy.

3) Some European countries have anticipated reform by adopting a separation law (France and Germany in 2013) or setting prohibitions (Belgium). In the United Kingdom, a separation law inspired by the Vickers Report (2011) is to be adopted by Parliament in early 2014.

The regulatory proposal presented on 29 January is more demanding than the Liikanen Report. Like the "Volker rule" in the US, it prohibits speculation on the bank's own account through the purchase of financial instruments and commodities, as well as investments in hedge funds (which prevents banks from circumventing the regulation by lending to hedge funds while holding significant shares in these funds, thereby taking advantage of the greater leverage).

Moreover, in addition to this prohibition the European legislator provides for the possibility of imposing a separation on an independent subsidiary for operations that are considered too risky, that is to say, that would result in taking positions that are too large. The aim is to address the porous border between proprietary trading and trading for third parties, as bankers could take risks for themselves while not covering the positions sought by their clients. With these new regulations, the legislator hopes that in the event of a bank crisis public support for the banks will benefit only depositors, not the bankers, with as a consequence an overall reduced cost.

Compared to French regulations, the regulatory proposal is more restrictive than the law on the separation and regulation of banking activities of 26 July 2013. Indeed, French law provides for the legal compartmentalization only of certain proprietary activities and highly leveraged activities in an independently financed subsidiary; strict prohibition concerns only high-frequency trading activities and speculation in agricultural commodities. And there are numerous exceptions: the provision of services to clients, market-making activities, cash management, and investment transactions and hedging to cover the bank's own risks. In contrary, the prohibitions are broader in the regulatory proposal, as it applies to all proprietary trading. In addition, the regulatory proposal prohibits investment in hedge funds, whereas the French law permits it provided that such activities are compartmentalized.

The regulatory proposal nevertheless concerns only banks of a systemic size, *i.e.* 30 out of the 8000 found in the European Union, representing 65% of banking assets in the EU. It will not be discussed until the election of the new Parliament and the establishment of a new Commission.

A reform that doesn't have a consensus

Michel Barnier's proposed reform has already provoked sharp criticism from certain member countries and the banking community. Some have reproached it for intervening in an area where it has no jurisdiction, which clearly indicates the current complexity of the legislation governing the European banking system.

France, Germany, Belgium could object, "Why are you interfering? We have already enacted our banking reform." But the logic of the banking union is that the same laws apply everywhere. These countries have chosen to carry out a minimal banking reform in order to pre-empt the content of European law. This is hardly acceptable behaviour at European level. There is also the case of the United Kingdom (for which Barnier's proposal opens the exit door: the regulations will not apply to countries whose legislation is more stringent).

The banking union provides for the European Central Bank to oversee the large European banks and for the European Banking Agency to set the regulations and rules on supervision. The Commission can therefore be reproached for intervening in a field for which it is no longer responsible. On the other hand, the crisis clearly showed that banking concerns more than just the banks. It is legitimate for EU political institutions (Commission, Council, Parliament) to intervene in the matter.

The proposal has encountered two contradictory criticisms. One is that it doesn't organize a genuine separation of deposit-taking banks and investment banks. From this perspective, deposit or retail banks would be entrusted with specific tasks (collecting and managing deposits; managing liquid savings and risk-free savings; lending to local government, households and businesses); they would not have the right to engage in speculative activities or trading activities or to lend to speculators (hedge funds, arranging LBO transactions). These banks would be backed fully by a government guarantee. In contrast, market or investment banks would have no government guarantee for their market interventions and equity and other above-the-line operations. Since these transactions are risky, the absence of a public guarantee would lead them to set aside a greater amount of capital and to bear a high cost for attracting capital. This would reduce their profitability and thus the development of hedging and other speculative activities. A company that was in need of a hedging operation would have to have it carried out by an investment bank and not by its regular bank, so at a higher cost. Conversely, this would reduce the risk that banks suck their clients (banks and companies) into risky investments and operations. A reform like this would greatly increase the transparency of financial activities, at the cost of diminishing the importance of the banks and financial markets. Michel Barnier did not dare take the principle of separation to this, its logical conclusion. He remains instead within the logic of the universal bank, which uses its massive size as a deposit bank to provide financial intermediary services to its customers (issuance of securities, coverage of risk, investment in the markets, etc.), to intervene in the markets (market-making for foreign exchange and public and private securities) and to underwrite speculative activities.

The reform is nevertheless facing stiff opposition from the banking community, who would have preferred the status quo. Hence Christian Noyer, a member of the ECB Governing Council, has labelled the proposals “irresponsible”, as if the ECB had acted responsibly before 2007 by not warning about the uncontrolled growth of banks’ financial activities.

The European Banking Federation (EBF) as well as the French Banking Federation (FBF) are demanding that the universal banking model be preserved. The banks are criticizing the obligation to spin off their market-making operations (including for corporate debt). According to the FBF, this regulation “would lead to making this operation considerably more expensive,” which “would have a negative impact on the cost of financing companies’ debts and hedging their risks”. However, this obligation may be waived if the banks demonstrate that their market interventions do not require them to take on any risk. The banks could therefore continue to act as market makers provided that they set strict limits on their own positions; they could provide simple hedging operations by covering these themselves.

A fourth pillar for the banking union?

European banks have of course rightly pointed out that this reform comes in addition to the establishment of the SSM (single supervisory mechanism), the SRM (single resolution mechanism), and the ECB exercise assessing the banks (launched in November 2013). The overall system does lack cohesion; a well thought-out schedule should have been set.

However, the separation advocated by the Barnier proposal lends credibility to the banking union and its three pillars (SSM, SRM and deposit insurance). This project does contribute to convergence in banking regulations, from both a functional and a prudential perspective. The establishment of a consistent framework simplifies control by the European supervisor under the SSM (the ECB will monitor the banks’ normal activities and ensure that they are not affected by speculative activities). The separation recommended by the Barnier proposal enhances the credibility of the SRM; there will no longer be any banks that are too big to go bankrupt, and investment bank losses will not rebound onto the lending activities of deposit banks and will not have to be borne by the taxpayer. By reducing the risk that deposit banks might fail, the risk of a costly rescue plan for investors (bail-in) is also lowered, as is the risk of needing recourse to deposit insurance. In this sense, the draft regulations can be considered a fourth pillar of the banking union.

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Europe's banks: sustaining the renewal of confidence

By Céline Antonin and Vincent Touzé

Since August 2012, bank shares in the stock markets have risen and their volatility has reduced, attesting to a return of confidence. Is this newfound confidence sustainable? *OFCE* Note no. 36 of 11 December 2013 attempts to answer this question by taking stock of the state of the banks in late 2013.

The financial crisis saw the valuation of banks suffer due to both a decline in the profitability of activities related to the financial markets and a general crisis of confidence in stock market investments. Since August 2012, however, bank results have improved, as has their performance on the stock markets.

That said, this newfound confidence is emerging in a context of profound change: the crisis has altered the way the European banking system functions, with the European Central Bank playing a greater role in lending to banks and with a sharp reduction in national exposures in the riskier countries (Portugal, Ireland, Italy, Spain and Greece).

Whether this confidence is sustainable will depend on the ability of the banks to face up to two challenges: first, to reduce the risk of insolvency of public and private debt in certain Member States; and second, to adapt to the institutional changes taking place at the European level (implementation of Basel 3, the banking union project and the gradual shift from a bail-out logic to a bail-in logic).

France-Germany: is there a demographic dividend?

By Vincent Touzé

Thanks to a high birth rate, France is aging less quickly than Germany. According to Eurostat, the French population is expected to exceed the German population by 2045. France could well become a European champion. But to what extent should we be talking about a demographic dividend?

The renewal of generations is of course important. It makes it possible to maintain a workforce that is large enough to meet the social costs (pensions, health care) of senior citizens, who are living longer and longer. In this sense, France should do better than Germany. But population growth also has its share of disadvantages. Indeed, in a context of scarce resources, the size of the population is primarily a factor that splits the amounts available per capita. For example, on a rationed labour market that is struggling to keep up the positions on offer due to problems with outlets and with production costs that are not competitive enough at the global level, growth in the labour force can also be counted in the numbers of unemployed. To avoid this, a more efficient labour market that is rooted in a thriving economy is essential. The demographic dividend depends as much on the productive capacity of new generations of workers as on their size.

The latest *Note of the OFCE* (no. 5, October 11, 2013) compares the relative performance of France and Germany over the period 2001-2012. This study shows how recent economic developments have been distinctly favourable to the German economy. Despite a glorious demographic future, France is mired in weak growth and mass unemployment that is hitting young people very hard. The demographic dividend is slow in coming.

In memoriam. Ronald H. Coase (1910-2013)

By Vincent Touzé

The American economist Ronald Coase, who died at 102 on 2 September 2013, has left us an exceptional body of work distinguished by its simplicity and relevance.

As a pioneer of the theory of the firm, Ronald Coase believed that this type of structure had an undeniable capacity to reduce transaction costs and thus to efficiently organize economic activity outside the market ("The Nature of the firm", *Economica*, 1937). The firm's dilemma is: to do it (*i.e.* to produce directly) or to get it done (*i.e.* to use the market). In the absence of transaction costs on the markets, there would be no firms but only small autonomous production units. The transaction costs result from all the expenses associated with the purchase or sale of a product: remuneration of intermediaries, acquisition of information, search for the best price, etc. When these costs are too high, there is thus an opportunity to produce the good or service oneself. However, firms also face costs to get organized. Organizational theory was born.

As a supporter of free competition, Coase attributed market failures to the poor definition of property rights ("The Problem of social cost", 1960, *Journal of Law and Economics*, 3: 1-44). He was wary of costly regulations. He opposed Pigou (*The Economics of Welfare*, 1932, Macmillan), who recommended public intervention to deal with negative externalities. Instead, Coase called for better identification of property rights and for the role of the state to be limited to ensuring respect for these rights. This idea was synthesized as the "Coase Theorem" in 1966 by George Stigler in his book *The Theory of Price* (Macmillan). By focusing specifically on the interactions between law (the definition of property, the grounds and consequences of court decisions, etc.) and economics, Coase became one of the founding fathers of a new discipline, the economic analysis of law.

In the 1990s, the Kyoto Protocol popularized the "Coase Theorem" by proposing the establishment of trading in emission rights to regulate the amount of greenhouse gas emissions, *i.e.* the well-known "right to pollute". There were two different approaches to controlling the emission of greenhouse gases: the sale of pollution rights, or the Pigou tax. The first approach involves assigning rights to emit gases in limited quantities. To produce the gases, one must possess rights. These rights are traded on a market where the price of gas emissions is determined by the interaction of supply and demand. The second approach is to assign an ad hoc price (Pigovian tax) to the marginal social cost of the externality. This tax is paid by the companies emitting the gas. The principle of pollution rights is often seen as more demanding (and so more constraining on companies) because the price of the gas emission is endogenous and the total quantity limited. With a Pigovian tax, the reverse is true. The price is fixed (or not very endogenous in the case of progressive taxation) and the quantity potentially unlimited.

Coase, who was devoted to simplicity in making presentations, unhesitatingly denounced the use of excessive mathematical formalism. In a profile published by the University of Chicago in 2012, he lamented that economics had “become a theory and math-driven subject”. According to him, “the approach should be empirical. You study the system as it is, understand why it works the way it does, and consider what changes could be made in order to improve the system.” He modestly concluded: “I’ve never done anything that wasn’t obvious, and I didn’t know why other people didn’t do it. I’ve never thought the things I did were so extraordinary.”

Coase’s work won him the Nobel Prize in 1991.

The law on the separation of

banking activities: political symbol or new economic paradigm?

By Céline Antonin and Vincent Touzé

Imprudence, moral hazard and systemic gridlock were key words for the banking crisis. Governments that were unhappy to have had no choice but to come to the rescue of the banks are now trying to regain control and impose new regulations. The regulations with the highest profile concern the separation of trading activities (trading on own account or for third parties) from other banking activities (deposits, loans, strategic and financial consulting, etc.). These are expected to have the advantage of creating a tighter barrier between activities, with the idea that this could protect investors if bank operations go badly on the financial markets. On 19 February 2013, the French Parliament passed a law on the separation of banking activities. Although the initial targets were ambitious, the separation is only partial, as only proprietary financial activities will be spun off. As these cover less than 1% of bank revenues, this measure tends to be symbolic. However, by giving legal force to the principle of separation, the State is demonstrating its willingness to take a more active role in supervision.

The idea of compartmentalizing banking activities is not new. In the aftermath of the 1929 crisis, the United States adopted the Glass-Steagall Act (1933), which required a strict separation between commercial banks (specialized in lending and in managing deposits) and investment banks (specialized in financial activities). France followed suit with its own banking law of 1945 [1]. The expected benefits of separating banking activities are twofold. On the one hand, customers' deposits would be better protected, because they could no longer be asked to absorb the potential losses of market activities; on the other hand, in case of bankruptcy, State aid would be limited, because only the retail part of the bank would be covered by a government guarantee.

Forty years later, in the wake of the major wave of deregulation in the 1980s-1990s, France was one of the first to abolish this distinction, with the Banking Act of 1984, thus establishing the principle of universal banking. This principle leads to grouping activities with high needs for liquidity (the financing of the economy) with those that make it possible to gather liquidity (deposit activities). This grouping has the undeniable merit of giving the banks a more solid financial foundation. Other benefits also flow from this: greater leverage; the size factor leads to economies of scale; and the banks' ability to internationalize allows them to join the "too big to fail" category. Across the Atlantic, these arguments certainly worked in favour of the abolition of the Glass Steagall Act in 1999 by the Clinton administration.

Since 2008, the banks have been hit by a number of shocks: the subprime crisis; the fall in financial stocks; the slump in economic growth; and fear of defaults on sovereign debt (for banks in the euro zone). These shocks have shown that some of the advantages of universal banking could turn into disadvantages if leverage is used too systematically and if large banks in difficulty begin to pose a systemic risk. Many voices then began to be heard advocating a new Glass-Steagall Act, based on a view that separating market activities [2] from other banking activities is a way of preventing large-scale banking crises. Trading on own-account activities concentrates the bulk of bank malfunctions, in particular reckless risk-taking and the occasional "mad" trader [3]. This compartment has thus now become the focus of increasing attention by the regulators.

The Dodd-Frank Wall Street Reform and Consumer Protection Act [4] adopted in the United States in 2010 did not establish the separation of banking activities in a strict sense, but adopted the "Volcker rule," which prohibits banks from "playing" with depositors' money. This led to a virtual ban on the speculative proprietary activities of banking entities as well as on investments in hedge funds or private equity funds. In addition to this rule, this Act also represented a major reform in favour of the tighter regulation of all financial agents (banks, insurance companies, hedge funds, rating agencies, etc.) as well as closer monitoring of systemic risks.

Europe is in turn planning legislation on the separation of banking activities. At the request of European Commissioner Michel Barnier, the group of experts led by the Governor of Finland's Central Bank, Erkki Liikanen, presented a report on 2 October 2012. It advocates a strict bank compartmentalization [5] but also reviews the remuneration of financial managers and traders, with a view to overhauling the current arrangements, which tend to "push people into crimes" such as excessive speculation, in order to make these arrangements more compatible with long-term objectives. If this report is turned into a European directive, it will then have to be transposed into the national law in each Member State. However, this Europe-level approach is likely to be overtaken by the legislative processes in several European countries. In Germany, a bill on banking regulation [6] was introduced by the government on 6 February 2013, and could enter into force by January 2014 (with implementation by July 2015). The United Kingdom stood out in 2011 with the publication of the Vickers report [7], although the British government is in no hurry to implement its recommendations, with a probable deadline of 2019. France, with its "law on the separation and regulation of banking activities", has not been left behind.

A MODEST FRENCH ACT …

The French law has several components. In addition to establishing the principle of separation, it also provides for measures to protect bank clients and to strengthen the supervision and control of the banks.It does this in several ways:

– Each bank will be forced to develop a preventive recovery plan [8] for dealing with a crisis and a resolution plan in case it is failing (a bank testament). The resolution plan will be submitted for the appreciation of the Prudential Control Authority (ACP), which becomes the Prudential Control and Resolution Authority (ACPR).

– The Deposit Guarantee Fund (FGD) becomes the Deposit Guarantee and Resolution Fund (FGDR), with an increased capacity to intervene in the event of a bank failure.

– Macro-prudential supervision is strengthened by the establishment of the Financial Stability Council (CSF).

– The rights of bank clients are enhanced (transparency on the cost of loan insurance, free choice of loan insurers, right to a bank account, etc.).

However, the flagship measure in the reform is the separation between “activities useful to the economy” and speculative activities. Banks are to confine their proprietary or “own account” activities in an ad hoc subsidiary that is subject to specific regulation and funded independently. These subsidiaries will be prohibited from practicing certain speculative activities that are deemed “too risky or that may be harmful to the economy or society”, such as activities on the markets for derivatives whose underlying assets are agricultural commodities, or high-frequency trading. Many activities will nevertheless be spared, such as providing services to customers, market-making activities, cash management, and bank investment or hedging operations to cover its own risks.

This law separating bank activities, which was initially presented as ambitious, will ultimately have only a limited impact. The universal banking model is not called into question. The admission of the head of the Société Générale bank could not be any clearer [9]: less than 1% of revenues are concerned. We are therefore a long way from how banking was compartmentalized prior to 1984. The criterion for separation is ambiguous. In fact, the border is porous between hedging risk and pure speculation: the law advances a fuzzy principle of “economic relevance”, and the banks may be tempted to play around in this legal vacuum. As for market making [10], it is difficult to distinguish between speculative proprietary activities, which have to be spun off, and activities to promote market liquidity: high-frequency trading is for instance usually practiced under the guise of market-making agreements, so the law may be no more than a sword slashing water if the status of market maker is not defined more precisely [11].

The law also provides for prohibiting a banking group from holding shares of a speculative type, like a hedge fund. However, the loans granted by banks to hedge funds are always accompanied by guarantees. From this point of view, the law will also have little impact.

… BUT COULD IT GO FURTHER?

Finding a new financial paradigm for a banking model is a complex exercise. In practice, it is not easy to separate banking activities purely and simply without causing problems, and there are generally many limits to banking reform.

First, limiting investment banks’ access to deposits as a source of liquidity, or eliminating this outright, would lead them to resort to more debt financing, which might be difficult to reconcile with the constraints set by the Basel III prudential regulations, which took effect on 1 January

2013. It is already very demanding in terms of equity levels.

Furthermore, it is important to note that banking risk is not inherent just in market activities. There are many other recent examples. Mortgage lending has also been an important source of risk: in Spain, falling house prices and the insolvency of borrowers virtually bankrupted the banks; in the United States, the subprime crisis is a crisis of real estate loans that affected the markets through sophisticated securitization mechanisms that allowed the banks to take the risk off of their balance sheets (at least ostensibly); in the UK, Northern Rock is a retail bank that specialized in mortgages and was hit hard by the credit crunch and the housing crisis. To some extent, universal banks have played an important role in saving banks that were too specialized, for example, JPMorgan Chase (Universal) took over Washington Mutual (savings and loan) and Bear Stearns (business), and Bank of America (universal) rescued Merrill Lynch (business).

In addition, the separation is supposed to wall off banking activities more tightly. But what happens if the subsidiary that manages the proprietary speculation goes bankrupt and causes heavy losses to the parent? In the past, two of the four major French groups, Crédit Agricole and BPCE, had insulated their market activities in their respective subsidiaries, Natixis and Cacib, but nevertheless had to come to their rescue in 2008 and 2011, respectively. The insulation seems to be very permeable.

In a context of financial globalization, compartmentalization may never be very effective. By its very principle globalized finance makes it possible to connect everything. This is in particular the role of the interbank markets [12].

In practice, it is difficult for a government to reform its banking sector in the absence of coordination with other countries. The domestic banks have foreign subsidiaries that may not be subject to the regulations. And above all, the profitability of rival foreign banks might improve, which would weaken the competitiveness of the domestic banks. At the European level, national interests differ, and each country may be tempted to impose its own bill. If the Liikanen report is turned into a Directive, then each Member State will be required to transpose it into their legal system. For the moment, the legislation of Germany and France is taking the lead. It is possible that these changes will influence any future directive.

If the effort to compartmentalize goes too far, there is also a risk of shifting the interconnections to less visible levels. It is essential to avoid falling into the trap posed by the dangerous illusion of thinking that we have eliminated a risk, when in fact it has just been moved.

Finally, too much regulation can sometimes kill regulation. In the financial sector, regulatory constraints may serve as a basis for speculation. So if a bank is having difficulty meeting certain regulatory constraints, the markets will be encouraged to speculate in order to provoke its failure and then profit from this. Caution is therefore needed before introducing new regulations.

Trying to apply the principle of separation too strictly could also lead to not supporting a commercial bank that is facing significant liquidity problems. However, according to the principle of “too big to fail”, such a decision is not always wise. The failure to support Lehman Brothers was punished in a way that had a significant long-term impact, as its collapse hit the entire economic and financial network.

It is also worth noting that taking banking and financial regulation to be a miracle cure could have deleterious effects on individual and collective responsibility. People think that the law can resolve any problem. Yet at the same time, it is very likely that the vectors of the next financial crisis will manage to circumvent the regulatory constraints, hence the importance for the supervisory authorities to remain vigilant and adopt a critical approach at all times.

GOING BEYOND THE POLITICAL SYMBOL

The government undeniably has little leeway to separate banking activities, because too much regulation may be ineffective or even dangerous. As a consequence, this law separating banking activities is not radical and will have a moderate effect on the banks. For its part, the government may have a clear conscience for having done something along the lines of its foreign counterparts. The bankers in turn are probably not unhappy at having given the impression of serving the public interest, especially at such a low cost.

Some will view this as just a poor political symbol. Others will try to go further and view this as giving hope that this reform will be seen as a strong signal to the banking world. This hope may not be in vain, as the principle of separation is now enshrined in law, and future governments will have plenty of time to strengthen it.

In practice, a change in economic paradigm that would lead to harmful speculation becoming increasingly rare will not result simply from a separation of activities. Banking laws should not be too complicated, because the devil has a tendency to hide in the details. The supervisory authorities must constantly keep a critical eye on the functioning of the markets, and the law needs to allow them some flexibility in determining when and how they should intervene. On these issues, Volcker's statement in 2011 is unambiguous [13]: "I'd write a much simpler bill. I'd love to see a four-page bill that bans proprietary trading and makes the board and chief executive responsible for compliance. And I'd have strong regulators. If the banks didn't comply with the spirit of the bill, they'd go after them." It is also worth examining various measures to make financial professionals (managers and market operators) more responsible. In this respect, the Liikanen report proposes revising the pay systems for bank executives and financial managers in order to make these systems more compatible with a long-term vision. It is also necessary to explore the possibility of increasing the criminal liability [14] of financial leaders. The permeability of the interface between careers in the regulatory sector and in the regulated sector also needs to be examined. In this regard, there are certainly ways to make the system less permeable. After all, recent history has shown that it is possible to go from being Chairman of the Fed to being a trusted advisor for a rich and powerful hedge fund….

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[1] Law 45-15 of 2 December 1945 provided for the specialization of financial institutions by classifying the banks in three categories: deposit banks, business banks and long-term and medium-term lending banks (Articles 4 and 5).

[2] Asset management can be exercised:

– for one's own account (*proprietary trading*): the bank buys or sells financial instruments that are funded directly out of its own resources. These resources include not only the bank's capital, but also savers' deposits and loans. This means that, in addition to its own funds, the other categories involved in the bank's financing, including customer deposits, indirectly bear a risk.

– or on behalf of third parties (*non-proprietary trading*): unlike proprietary trading, the market or borrowing risks are borne mainly by the client. However, on certain products, the bank could face significant operating risks.

[3] http://lexpansion.lexpress.fr/economie/trading-pour-compte-propre-la-face-cachee-des-banques_233686.html.

[4] Title VI of the Act proposes improving regulation and is considered to be an application of the *"Volcker Rule"*, *http://useconomy.about.com/od/criticalssues/p/Dodd-Frank-Wall-Street-Reform-Act.htm*.

[5] The report recommends a separation of proprietary market activities but also of certain other activities on the financial markets and derivatives for third parties.

[6] Germany is also preparing a bill, under which the German banks will be obliged to wall off their proprietary trading. As in France, the universal banking model will not be called into question. http://m.lesechos.fr/redirect_article.php?id=reuters_00495696&fw=1.

[7] In September 2011, the Vickers Report recommended separating retail banking services from investment activities, by ringfencing retail banking services in subsidiaries, along with the requirement of a 10% equity cushion for retail banks. The British government is committed to introducing the reforms into law by 2015, with implementation set for 2019.

[8] This plan provides for different possibilities for recovery (recapitalization, a savings plan, restructuring, etc.) and excludes any call for public financial support.

[9] "We believe that, while in 2006-2007, 15% of activities could be considered market activities, 15% to 20% of which could be classified as disconnected from the customer, and consequently transferred to a subsidiary, this proportion is now less than 10%, and ranges from 3.5% to around 5% on average." Frédéric Oudéa, 30 January 2013, at a hearing before the Finance Committee of the National Assembly, http://www.assemblee-nationale.fr/14/pdf/cr-cfiab/12-13/c1213060.pdf.

[10] Market-making corresponds to the permanent presence of an operator who provides liquidity to the market.

[11] In this respect, we should mention the amendment tabled by Karine Berger, who wants Bercy [the Ministry of the Economy] to set the threshold above which market activities must always be spun off.

[12] Since 2008, the crisis of confidence in the banking market has posed great difficulties for access to liquidity in some banks, even though they are perfectly solvent, which has forced the central banks to intervene and take the place of the interbank market.

[13] 22 October 2011, http://www.nytimes.com/2011/10/22/business/volcker-rule-grows-from-simple-to-complex.html?pagewanted=all&_r=0.

[14] In this respect, the American authorities have not hesitated to take action against financial institutions that have failed to meet their obligations. See, for example, the recent action taken against Standard & Poor’s, http://www.bloomberg.com/news/2013-02-06/s-p-lawsuit-portrays-cdo-sellers-as-duped-victims.html. See too the proceedings taken against a former employee of Goldman Sachs: http://www.sec.gov/litigation/complaints/2010/comp-pr2010-59.pdf and http://dealbook.nytimes.com/2013/01/31/trader-accused-of-misleading-clients-leaves-goldman/ or the investigation into the infamous “London whale”: http://www.reuters.com/article/2013/02/15/us-lehman-jpmorgan-londonwhale-idUSBRE91E00W20130215.

Obama 2012: “Yes, we care!”

By Frédéric Gannon (Université du Havre) and Vincent Touzé

On Thursday, 28 June 2012, the United States Supreme Court delivered its verdict. The principle that individuals are obliged to take out health insurance or else face a financial penalty, a central plank in the 2010 reform [1] of the health insurance system (the Affordable Care Act [2]), was held to be constitutional. This reform had been adopted in a difficult political context. It includes a variety of measures intended to significantly reduce the number of Americans without health coverage. Although it will increase federal spending, new revenues and spending cuts will make it possible to reduce the deficit.

From September 2009 to March 2010, there was a lengthy process of drafting and approving the law, with an uncertain outcome due to the lack of a majority in the Senate [3]. Since the law passed by the House of Representatives and signed on 23 March 2010 by President Obama differed from the version passed by the Senate, amendments were introduced in a Reconciliation Act that was passed on March 30th. Opponents of the reform (26 states, numerous citizens and the National Federation of Independent Business) then decided to take the fight to the US Supreme Court. Their hopes rested mainly on the possible unconstitutionality of the law, which centered on the individual’s obligation to take out health insurance, called the “individual mandate”, and on the expansion of the Medicaid public insurance program.

The favourable judgment of the Supreme Court was obtained with a narrow majority: five judges voted for [4] and four against [5]. The political inclinations of the judges did not seem to have worked against the law, since Chief Justice John G. Roberts, an appointee of George W. Bush, gave his approval. The Supreme Court majority considered that the financial penalty for a failure to take out insurance is a tax [6] and that it had no cause to rule on the merits of such a tax. It passed this responsibility to Congress (the upper and lower houses) which, in this case, has already debated and approved the law. Consequently, this point of law is valid.

According to the Supreme Court, the financial penalty for failing to purchase health insurance could be viewed as an individual obligation to purchase [7], and “the Commerce Clause does not give Congress that power”. But from a functional standpoint, this penalty can be regarded as a tax, in which case Congress has discretion to “lay and collect Taxes” (Taxing Clause). Hence the positive verdict of the Supreme Court. However, the Court believes that “the Medicaid expansion violates the Constitution” because the “threatened loss of over 10 percent of a State’s overall budget is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion”.

The Supreme Court decision represents a major victory for President Barack Obama, who had made a reform to ensure more equal access to the health insurance system one of the spearheads of his 2008 election campaign. His Democratic predecessor in the White House, Bill Clinton, previously had to abandon a similar reform due to fierce opposition from the Republicans and growing divisions among the Democrats. In order to give himself every chance of success, Obama has had to be more strategic in the programming of both the reform and the way it was presented [8]. To do this, he also assembled a team of experienced specialists [9].

The Act represents a real cultural revolution in a country where the health insurance system excludes nearly 50 million people. Besides the individual mandate requiring Americans to purchase health insurance, the ACA’s main measures are:

- The creation of “exchanges” for insurance contracts where people can buy health coverage, with a government

subsidy that depends on the level of income;
- Expansion of the Medicaid public health insurance program [10] (public coverage for all households with incomes below 133% of the federal poverty level) and financial penalties on states that choose not to implement this expansion (elimination of all federal funding of the Medicaid program);
- A requirement that employers offer health insurance to their employees (application of financial penalties if the obligation is not met, with exceptions for small businesses);
- New regulations on the private insurance market (obligation to offer coverage to all individuals, with no conditions on their health status).

Beginning in 2014, millions of uninsured American households should benefit from the expansion of Medicaid, which the Supreme Court has now ruled unconstitutional – this raises numerous questions [11]. How many States will be tempted not to expand Medicaid? What are the consequences for the poor households [12] who were to benefit from this expansion? Will they have the means to afford subsidized private insurance [13]? Will they be penalized financially if they do not buy insurance? Will they be encouraged to migrate to States that have adopted the expansion [14]? It is reasonable to expect that few States [15] will boycott the expansion of Medicaid, as the ACA offers them other strong incentives (federal assumption of 100% of the additional cost from 2014 to 2016, then 95% after 2017, and 90% after 2020; loss of some federal funds if no expansion). However, adjustments in the law will likely be useful if policymakers want to avoid excluding those who are too poor to afford subsidized private insurance.

The law will come into force gradually, with the various measures to apply from 2014. According to the latest report by the Congressional Budget Office (2012), annual government expenditure (expansion of Medicaid and private insurance subsidies) should rise by about $265 billion per year [16] by 2022 (the estimated total cost between 2012 and 2022 is $1,762 billion), and the number of uninsured should fall by about 33 million [17]. The reform also provides for an increase in tax revenue (higher compulsory levies and new taxes) and a reduction in federal spending (primarily substitutions between the expanded Medicaid program and the old program). This will result in amply offsetting the cost of the reform. In a previous report in March 2011, the CBO estimated that the total reduction in the deficit over the period 2012-2021 will come to $210 billion. In the name of hallowed liberties, however, there is still strong opposition to the individual mandate [18], but over time it can be hoped that this mandatory principle will come to be viewed first and foremost as a basic right that protects all citizens.

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[1] For an overview of the health insurance system and the reform, see Christine Rifflart and Vincent Touzé, "La réforme du système d'assurance santé américain", *Lettre de l'OFCE, n°321*, 21 June 2010. Also see the Wikipedia article on this subject.

[2] This legislation reconciles the two laws, the *Patient Protection and Affordable Care Act* and the *Health Care and Education Reconciliation Act*.

[3] "Health Care Reform: Recent Developments", *The New York Times, June 29*, 2012.

[4] Stephen Breyer, Elena Kagan, Ruth Bader Ginsburg, and Sonia Sotomayor, along with Chief Judge John G. Roberts.

[5] Clarence Thomas, Anthony Kennedy, Antonin Scalia and Samuel Alito.

[6] Floyd Norris, "Justices Allow the Term 'Tax' to Embrace 'Penalty'", *The New York Times, June 28*, 2012.

[7] The legal position of the Obama administration has been to argue that the portion of the obligation to purchase insurance tantamount to a tax is the penalty paid by those who do not meet this requirement. This penalty has a regulatory function: it is designed based on the logic of an incentive, and not from the perspective of new tax revenue. Judge Jeffrey Sutton explained that if the government had clearly specified that the obligation to buy insurance was a tax, it would have been easier to justify in terms of its constitutionality. Most tax allowances or tax rebates are positive incentives (tax breaks on the acquisition of cleaner vehicles, for example). The health insurance requirement acts instead as a negative incentive by imposing a penalty / fine on those who decide not to buy insurance. Faced with these alternatives, they will choose in all rationality – according to a Pigouvian perspective – the option that they consider the most profitable or the least costly.

[8] Ezra Klein, “Barack Obama, Bill Clinton and Health-Care Reform”, *The Washington Post, July 26*, 2009.

[9] Robert Pear, “Obama Health Team Turns to Carrying Out Law”, *The New York Times, April 18*, 2010.

[10] Medicaid is a public health insurance program for the poorest households (about 35 million beneficiaries). The numerous criteria (income, age, degree of invalidity, state of health, etc.) lead to excluding a non-negligible portion of society’s poorest. Hence more than 20 million people living below the federal poverty level do not have access to Medicaid. On the other hand, Medicare, the other public health insurance program, which is only for those aged 65 and over, broadly covers this age group.

[11] Urban Institute-Health Policy Center, “Supreme Court Decision on the Affordable Care Act: What it Means for Medicaid”, *Policy Briefs, June 28*, 2012.

[12] Genevieve M. Kenney, Lisa Dubay, Stephen Zuckerman and Michael Huntress, “Making the Medicaid Expansion an ACA Option: How Many Low-Income Americans Could Remain Uninsured?”, *Policy Briefs, Urban Institute – Health Policy Center, June 29*, 2012.

[13] In the absence of an expansion of *Medicaid*, their health insurance spending will be capped at 2% of their income.

[14] This notion of voting with their feet was put forward in an article by Charles M. Tiebout (1956): “A Pure Theory of Local Expenditures”, *The Journal of Political Economy*, 1956, vol. 64/5, pp. 416-424.

[15] Brett Norman, “Lew: ‘Vast majority’ of states will expand Medicaid”, *Politico, 1st July 2012*.

[16] In 2022, 136 billion dollars will finance public health insurance for 17 million poor people (expansion of Medicaid) and 127 billion dollars will go to subsidies for the purchase of private insurance by 18 million people.

[17] In 2022, the 27 million uninsured remaining will consist of illegal immigrants (ineligible for public and private insurance programs) and those eligible for Medicaid who do not want to take out insurance as well as those ineligible for Medicaid who also do not want insurance.

[18] Susan Stamper Brown, “Time To Clean Up The Obamacare Mess”, *The Western Center for Journalism, June 26, 2012*.