

# European banking regulation: When there's strength in union

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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.

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## Europe’s competition policy – or extending the domain of integration

By [Sarah Guillou](#)

The principle of “fair competition” was set out in the general principles of the Preamble to the Treaty of the European Communities (TEC) in 1957, as was the commitment that the Member States will enact policies to ensure this fairness. Competition policy – overseen by the Competition Directorate – is the benchmark policy for market regulation, but also for industrial strategy and, more recently, for fiscal regulation.

The need for a competition policy flows directly out of Europe’s project to establish a common market, and numerous

attempts at industrial policy have come to grief on the altar of Articles 81 to 89 of the TEC (and now Articles 101 to 109 of the Treaty on the Functioning of the European Union), which establish the framework for competition. In practice, the two policies are clearly complementary in the European Union, and the space granted to the former develops thanks to the set of exceptions to the latter.

### **Competition as a general framework in the European Union**

As a foundation of the common market, respect for and controls on market competition is a general principle underlying all European policy. More fundamentally, competition can be considered a *constitutional* principle of the European Union. It makes it possible to define the European space, the common space whose existence depends on controls on competition between States. Europe's competition law is therefore developed first of all to control economic competition between the States. The aim is to prevent the States from adopting policies that create benefits for companies in their own territory and discriminate against companies from other States.

Within the European Commission, the Competition Directorate therefore has a significant role and responsibility. Supervision of competition is exercised through the control of mergers and cartels on the one hand, and the control of State aid on the other. To monitor cartels or any other abuse of a dominant position, competition law is exercised *ex post* to protect consumers and competitors from predatory behavior and abusive pricing. Control over concentration developed generally from the second half of the 1980s, in synch with the increase in the size of mergers and the opportunities for European rapprochements, which resulted from the success of the single market. Moreover, mergers and acquisitions are increasingly the subject of negotiations between the companies involved and the European Commission and conclude with a transfer of activity. For example, the acquisition of Alstom's

energy division by General Electric in 2015 was accompanied by the sale of part of the gas turbine business to the Italian company Ansaldo Energia. This control has given the Commission an active role in the structuring of the market, which amounts to a super power, but since the 1990s, fewer than 1% of notifications concerning concentrations have led to a veto by the Commission.

European supervision of aid has been relatively continuous since it presupposes a permanent exercise of supervision of “undistorted competition” in the European area. It is a tool both to control any distortions of competition created by a Member State granting advantages to its companies and to fight against a race to “who grants most” in terms of subsidies. Thus, Article 87 (1) of the Treaty establishing the European Community states that State aid is considered to be incompatible with the common market, and Article 88 gives the Commission a mandate to monitor such aid. But Article 87 also specifies the criteria the Commission uses to investigate aid.

Business subsidies are subject to the Commission’s authorization if they exceed 200,000 euros over three years and they are not included in the set of exemptions decided by the EU. The majority of aid investigated is authorized (almost 95%). As for France, the percentage of aid disallowed out of the amount granted is in line with the European average. There have of course been some noteworthy decisions, such as when EDF was required to repay 1.4 billion euros in 2015 following tax assistance dating back to 1997. But the Commission also recently allowed the French State to acquire an interest in the capital of PSA Peugeot Citroën (2015). Similarly, the Commission authorized the public-private partnership underpinning the construction of the Hinkley Point nuclear power plant in Great Britain.

Some recent developments in the exercise of this control should be noted. The regulation of State aid has been used to examine the provisions of tax agreements negotiated by



companies with certain governments such as Ireland, Luxembourg and the Netherlands. By favouring some companies to the detriment of their competitors, these tax agreements create not only distortions in competition but also competition between States to attract the profits and jobs of the large multinationals. For example, in October 2016, the Commissioner for Competition, Margarethe Vestager, described the tax agreement that Apple had received in Ireland as unauthorized State aid, and accordingly required the Irish government to recover 13 billion euros from Apple. This use of the regulatory power over State aid constitutes a turning point in competition policy, in that it recalls that the object of competition policy is to ensure that competition between States does not go against the notion of "a common market."

### **Industrial policy is expressed in the exceptions to competition policy**

Note that while competition policy is well defined at European level, there are many meanings of industrial policy in Europe, almost as many as there are members. This makes it more difficult to find policy compromises prior to the definition of such a policy. Moreover, the institutional logic and the economic logic are not the same. As already noted, competition policy has a strong institutional anchorage, which is not the case with industrial policy. Even though the European Coal and Steel Community was at the origin of the European Community, industrial policy is not at the heart of the European project. Moreover, the economic logic is different: competition policy is defined with reference to space (the relevant market), whereas industrial policy can be understood only by integrating the life cycle of companies and industries, and therefore in reference to each country's industrial history. In a shared sense, industrial policy can be defined as policy that is aimed at orienting an economy's sectoral and / or technological specialization. It is therefore easy to grasp the dependence of industrial policy on national preferences.

The tool favoured by the States to express this policy is aid to companies, whether directly or indirectly.

State aid is classified according to 15 objectives, ranging from “preservation of the heritage” to aid for “research and development and innovation”. For the EU as a whole, the three categories that are largest as a percentage of total aid are: environmental protection (including aid for energy savings), regional aid, and aid for R&D and innovation. The amounts involved are far from negligible: in 2014, for example, 15 billion euros for France and 39 billion for Germany. A higher amount of aid in 2014 was due largely to an increase in aid for renewable energy as a result of the adoption in 2014 of revisions on the rules on this type of aid. Germany is the country that contributed the most to this increase. Support for renewable energies is indeed at the heart of its industrial policy.

European industrial policy develops as exemptions to the application of control on aid and hence to competition policy. These exemptions are set out in the general regulations on exemptions by category. There are many Block Exemptions, which revolve around the following five themes: innovation and R&D, sustainable development, the competitiveness of EU industry, job creation, and social and regional cohesion. It can be seen in this set of exemptions that supervision is also the expression of Europe’s policy choices on orienting public aid, and thence directing public resources towards uses that are in line with these choices. These choices are the result of a relative consensus on the future of the European economy which shapes industrial policy. The largest categories of aid are research and development and environmental protection. In a word, the European economy will be technological and sustainable. This is a policy of orientation and not a policy of resources, and it takes shape within the overarching framework of the policy on competition.

**What future for Europe’s competition policy?**

It seems that, given the primacy of competition policy and its foundational role for Europe's union, competition policy is the conductor of microeconomic policy. It has, up to now, proved capable of adapting. Thus, in compliance with the European project, economic constraints and societal orientations have led to changes in the definition of exemptions on the control of aid, which have allowed for the expression of industrial policy. Similarly, it has seized upon the fiscal hyper-differentiation between certain States, which sharply contravened European integration and the common market.

Competition policy must not be weakened in authority or scale, but it must retain its capacity to adapt both to industrial orientations and to the deployments of Member States' strategies on competition with each other. It is also an essential counter-power to the growing strength of the multinationals, and governments must support it in this sense rather than becoming the mouthpieces of their national champions.