"FIT AND PROPER" REGULATIONS IN THE BANKING INDUSTRY: WHAT WE HAVE LEARNT IN THE POST-CRISIS YEARS

Pablo de Andres *, Laura Arranz-Aperte **, Juan Antonio Rodriguez-Sanz ***

* Autonomous University of Madrid, Madrid, Spain; European Corporate Governance Institute (ECGI), Brussels, Belgium
** *Corresponding author,* Hanken School of Economics, Helsinki, Finland
Contact details: Hanken School of Economics, Arkadiankatu 22, 00101, Helsinki, Finland
*** University of Valladolid, Valladolid, Spain

How to cite this paper: Andres, P. D., Arranz-Aperte, L., & Rodriguez-Sanz, J. A. (2020). "Fit and proper" regulations in the banking industry: What we have learnt in the post-crisis years. *Journal of Governance & Regulation, 9*(3), 84-95. http://doi.org/10.22495/jgrv9i3art6

Copyright © 2020 The Authors

This work is licensed under a Creative Commons Attribution 4.0 International License (CC BY 4.0). https://creativecommons.org/licenses/by/4.0/

ISSN Print: 2220-9352
ISSN Online: 2306-6784

Received: 10.06.2020
Accepted: 08.09.2020

JEL Classification: G18, G21
DOI: 10.22495/jgrv9i3art6

Abstract

In a highly influential paper, Bradford (2015) coined the term "Brussels effect" to describe the way the EU regulatory power is externalized to third countries via consumer markets. In this paper, we analyze whether there is a Brussels effect in the finance industry as well. To do so, we study the evolution and regulatory changes put in place in Europe after the financial crisis to ensure that directors in the banking industry are adequately qualified and competent to meet the expertise and education requirements (the "fit and proper" criteria). We find that, as a result of the latest financial crisis, stricter board requirements were paired with stricter controls from the banking supervisory authorities in Europe. We describe the post-crisis regulatory framework as being characterized by 1) a strong commitment to regulation of risk management, 2) a multilayered control system and 3) a harmonized system with a strong presence of national regulatory authorities. We conclude that the European Union – through European Banking Authority (EBA) and the European Single Supervisory Mechanism (SSM) – has become a standard setter for the banking industry promoting international financial standards and "hardening" the soft law recommendations with directives and binding technical standards as regulatory instruments.

Keywords: Brussels Effect, Financial Supervision, Corporate Governance, Financial Crisis, Board of Directors

Authors' individual contribution: Conceptualization – P.A., L.A.-A., and J.A.R.-S.; Methodology – P.A., L.A.-A., and J.A.R.-S.; Formal Analysis – P.A., L.A.-A., and J.A.R.-S.; Investigation – P.A., L.A.-A., and J.A.R.-S.; Resources – P.A., L.A.-A., and J.A.R.-S.; Writing – Original Draft – P.A., L.A.-A., and J.A.R.-S.; Writing – Review & Editing – P.A., L.A.-A., and J.A.R.-S.; Visualization – P.A., L.A.-A., and J.A.R.-S.; Supervision – P.A., L.A.-A., and J.A.R.-S.

Declaration of conflicting interests: The Authors declare that there is no conflict of interest.

1. INTRODUCTION

The global financial crisis of 2008 prompted regulators and practitioners to review the adequacy requirements for bank managers and key personnel to play their role as supervisors of large transnational financial institutions (Anderson & Fraser, 2000). The failure of banks and financial

institutions was blamed on their excessive risk taking and lack of vision. This failure spilled over to economies and – as Correa, Lee, Sapriza, and Suarez (2014) pointed out – led to a sovereign crisis of unintended and devastating consequences.

As a result, financial risk controls and corporate governance regulations (including the adequacy norms for directors to hold their board positions) became even more strict and potent in Europe (European Central Bank, 2016; Financial Conduct Authority, 2016) and around the world. For example, to facilitate the resolution of large international firms, the Financial Stability Board (FSB) proposed a list of attributes that national resolution regimes should meet (Financial Stability Board, 2011), and the Basel Committee on Banking Supervision (BCBS) significantly increased the regulations on capital and liquidity (Basel Committee on Banking Supervision, 2011; Dermine, 2013). Furthermore, more stringent guidelines[1] were published and stricter controls were put in place to ensure that directors meet the adequacy requirements to perform their functions.

This essay examines the legislative processes relating to the European banking sector during these years, focusing on the corporate governance components related to the adequacy norms for directors in the banking industry (henceforth "fit and proper" regulations).

This work undertakes an exhaustive investigation of the international and European financial regulatory agencies, as well as the fit and proper norms that they have issued and explains how these norms have changed and adapted to the need for risk management in the post-crisis years.

Our study shows that the financial regulatory landscape evolved in response to the 2007-2008 financial crisis from a risk management regime organized at the local or national level with scarcely any supranational supervision, to an environment dominated by transnational financial authorities, such as the European Banking Authority (EBA) and the European Single Supervisory Mechanism (SSM), and a corporate governance ecosystem with risk management at the center. The adequacy requirements for board members and their job fitness – which had been vague until then – became stricter and more quantifiable. Stress tests and supervisory mechanisms improved to include, among other risk management measures, compliance by banks with fit and proper regulations.

We show how, in the aftermath of the financial crisis, the supervisory and regulatory framework for transnational financial conglomerates in Europe evolved to a system characterized by 1) a strong commitment to regulation of risk management and corporate governance, with stricter standards and stronger enforceability, 2) a multi-layered control system, consisting of European regulatory bodies and national competent authorities (NCAs), 3) a harmonized system, but with two differentiated leading institutions: the EBA, which supervises the financial institutions of both euro and non-euro countries, and the SSM, which embodies the European Central Bank (ECB) together with the NCAs for the euro countries.

As Quaglia and Spenszharova (2017) and Bradford (2015) suggest, new rules sponsored by regulators in the leading financial powers emerge as international standards. We argue that, after the financial crisis, the European Union – through its EBA and SSM – has become a standard setter for the banking industry, acting not so much as a first mover who upholds its rules, but as a jurisdiction with large domestic financial markets and, more importantly, a regulatory capacity that has promoted international financial standards already in place.

Our study shows that the transnational nature of financial institutions makes them susceptible to the "Brussels effect" (as described by Bradford (2015)), by which companies operating across legislations choose to adopt the stricter regulatory standards in all the markets in which they operate. In our case, as banks and financial institutions have only one board of directors regardless of the jurisdiction where they carry out their business, they have an incentive to adopt the strictest regulation of all markets where they operate. In the case of the banking industry, the multilayered system of supervision established by the EU determines that bigger banks (in terms of assets, turnover or market share) will be supervised by the European authorities at the highest standards. To the extent to which these banks also operate in national markets and in jurisdictions outside Europe, their standards are also adopted at the national level triggering a "rise to the top" phenomenon, whereby national standards become stricter and a result of the EU corporate governance harmonization.

The rest of the paper is structured as follows. Section 2 provides a literature review and develops our hypothesis. Section 3 describes the European and international institutions at three different points of time: 1) before the crisis, 2) during the crisis years, and 3) in the aftermath of the crisis. Section 4 describes the fit and proper regulations at these same points of time, and Section 5 concludes the paper.

2. THEORETICAL FRAMEWORK

2.1. The role of corporate governance in the financial crisis

At the onset of the 2008 financial crisis, poor corporate governance was blamed for bank failures and excessive risks, and so was stated in the special report by the Group of Thirty (G30) "*A new paradigm: Financial institution boards and supervisors*" (G30 Working Group, 2013). This vision was prevalent at early stages of the crisis and was largely supported in the academic literature (Kirkpatrick, 2009; Grove, Patelli, Victoravich, & Xu, 2011; Hau & Thum, 2009; Becht, Bolton, & Röell, 2011; Erkens, Hung, & Matos, 2012; Minton, Taillard, & Williamson, 2014; Fernandes & Fich, 2016; Armour et al., 2016; Srivastav & Hagendorff, 2016; Bernile, Bhagwat, & Yonker, 2018; Berger, Imbierowicz, & Rauch, 2016; Laeven & Levine, 2009; Caprio, Laeven, & Levine, 2007).

One of the first researchers to contradict this view were Aebi, Sabato, and Schmid (2012) who,

[1] See the "Guidelines on the assessment of the suitability of members of the management body and key function holders under Directives 2013/36/EU and 2014/65/EU," as well as the joint ESMA and EBA guidelines, EBA/GL/2017/12.

already in 2012, showed that standard corporate governance variables were mostly insignificantly or even negatively related to the banks´ performance during the crisis. Also, Adams and Mehran (2012) find that board independence is not related to bank performance whereas board size is, and Beltratti and Stulz (2012) find evidence supportive of theories that emphasize the fragility of banks financed with short term capital market funding, and argued that this evidence "poses a substantial challenge to those who argue that poor bank governance was a major cause of the crisis" (p. 1). Other authors – for example, Mechelli and Cimini (2019) – argue that the role played by corporate governance mechanisms is likely to be affected by the quality of the legal systems in which the firm operates.

According to De Haan and Vlahu (2016), the mixed results in previous research do not allow us to conclude a relation between corporate governance of financial institutions and their performance, a vision that is corroborated by Adams (2012) and by Fernandes, Farinha, Martins, and Mateus (2018) in their survey of the literature

2.2. Individual directors' characteristics and bank performance

The seminal studies that relate individual education and company performance refer to management teams. Hambrick, Cho, and Chen (1996) find that the top management teams in the US airlines that are diverse, in terms of functional backgrounds, education, and company tenure exhibit a relatively great propensity for action. They conclude that board heterogeneity, albeit a double-edged sword, in its overall net effect in terms of market shares and profits, is positive. Also, Cheng, Chan, and Leung (2010) argue that management demography of the chairperson is important and reflects valuable resources of the firm. Their findings suggest that the personal attributes of the chairperson are appropriate proxies of critical human resources and managerial networking competencies to conduct businesses and are consequently related to superior corporate performance.

After the financial crisis, the educational attainment of board members and the heterogeneity (in terms of education, age, gender, etc.) of the board have also been studied. In general, it is widely accepted in the literature that board heterogeneity is related to superior performance both in the banking industry and in the non-banking sector (Pathan & Faff, 2013; Pathan, 2009). Wang and Hsu (2013) have found a relation between age heterogeneity among board members and operational risk, and McNulty, Florackis, and Ormrod (2013) find that financial risk is lower where non-executive directors have high effort norms and where board decision processes are characterized by a degree of cognitive conflict. Other authors (Elyasiani & Zhang, 2015; Fich & Shivdasani, 2006; Jiraporn, Davidson III, DaDalt, & Ning, 2009) relate board busyness to lower market performance. By contrast, other studies (Larcker, So, & Wang, 2013; Houston, Lee, & Suntheim, 2018) suggest that director networks provide economic benefits, some of them not immediately reflected in stock prices.

It is in any case clear that the banks nowadays consider the composition of the board (heterogeneity, expertise, network and educational attainment) a central point of their corporate governance (Hopt, 2013; John, De Masi, & Paci, 2016, Fich & Shivdasani, 2007). As Cheffins (2015) points out: "*... while nonfinancial companies were unmistakably chastened by the corporate governance scandals of the early 2000s and by the corporate governance reforms introduced by the federal Sarbanes-Oxley Act of 2002… the banking sector received something of a governance "free pass". Only in the wake of the trauma of the 2008 financial crisis did things change, resulting in more robust corporate governance. Banks are now being run less flamboyantly than was the case immediately prior to the onset of the crisis, much as nonfinancial companies operated in a more restrained way after the corporate scandals and legislative reforms of the early 2000s*" (p. 3).

2.3. Changes in banks' internal governance as a result of the crisis

In addition to the studies on the corporate governance implications of the financial crisis, another strand of literature analyses how institutions, banks and non-financial companies have responded to different aspects of the crisis. Veron (2018) assesses the EU policy response to the crisis as mostly inadequate in the first half and mostly effective in the second half of the period 2007-2016. Acharya, Borchert, Jager, and Steffen (2018) find that governments with weaker public finances were more reluctant to recapitalize distressed banks during the financial crisis of 2007 to 2009. As for the financial institutions, Rajgopal, Srinivasan, and Wong (2019) conclude that boards of the US banks seem to have responded modestly to the financial crisis. Other studies concentrate on changes in capital requirements (Dermine, 2013), the interface between domestic and international governance (Quaglia & Spendzharova, 2017), the systemic risk of European (Black, Correa, Huang, & Zhou, 2016; Laeven, Ratnovski, & Tong, 2016) and US (Anginer, Demirguc-Kunt, Huizinga, & Ma, 2018) banks, and the changes in legislation in the wake of the crisis (Quaglia, 2013).

2.4. Exporting governance standards and the dynamics of regulatory change

This improvement in corporate governance after the crisis has been partly due to the travelling of governance standards around the world. What Büthe and Mattli (2010) call market-based public international standard-setting entails competition between legislatures or regulatory agencies of individual states or competition between multiple regional or minilateral standard-setting bodies. This way, geographically limited regulatory solutions can come into competition with each other and thus create functional or political-economic incentives for a single standard for a broader set of countries or even for a single global standard. As an example of this market based standard setting – according to Aggarwal, Erel, Ferreira, and Matos (2001) – foreign

institutions from countries with strong shareholder protection play a role in promoting governance improvements outside the US.

Quaglia and Spendzharova (2017) explain why regulators in the US and the European Union act as pace setters in international standard setting, and Bradford (2012) explains the mechanisms through which the European Union has become a pace setter exporting standards to markets outside its jurisdiction, in a phenomenon widely known as "the Brussels effect."

In view of this literature, we can argue that corporate governance of financial institutions has been enhanced after the financial crisis and that governments and supranational organizations have had a role in promoting changes in the internal governance of banks. The responses of banks to the crisis and to the changes in the regulatory framework have been and are being widely documented, and while there are discrepancies among researchers on the link between governance and the financial crisis, there is consensus so as to assign internal governance a central role in the well-functioning of financial institutions.

We hypothesize that this enhancement has predominantly steamed from European institutions, and was the seed of a "Brussels effect" in the banking industry, by which international banks operating across jurisdictions choose to adopt the stricter regulatory standards in all the markets in which they operate. As banks have only one board of directors, they have an incentive (and obligation) to adopt the strictest regulation of all markets where they operate. Via this market mechanism, the European Union externalizes its standards to jurisdictions beyond the limits of its regulatory authority.

To test this hypothesis, we compare the set of fit and proper regulations issued by the ECB to those issued by international supranational organizations such as the Basel Committee on Banking Supervision. In this essay, we show that fit and proper regulation in the EU is stricter than the standards set by BCBS. Besides, the ECB guidelines require the most stringent enforcement, and this enforcement is not left to the banks (as in the case of BCBS principles) but rather to the ECB.

3. INSTITUTIONAL FRAMEWORK

The current corporate governance framework in Europe is the result of two driving forces: improvement and harmonization. First, with the aim to improve the level of corporate governance in Europe, European regulations followed the trail of US regulations, which were especially harsh as a result of the dot.com and Enron scandals at the turn of the century (the Sarbanes-Oxley Act, 2002)[2], and after the 2008 financial crisis (Dodd-Frank Act, 2010)[3]. These regulations paid serious attention to the balance of power between the CEO, board of directors, and shareholders (Cheffins, 2011).

Second, the development of corporate governance in Europe is driven by the European Union's attempts to harmonize corporate governance standards across the EU. There has been a joint endeavor to not only improve corporate governance standards in Europe but also harmonize the systems of member states to advance toward a common corporate governance system within the framework of the single European market (Arranz-Aperte, 2013). The European Commission reiterated its commitment to a successful single market, with corporate governance and corporate social responsibility being the key elements in building people´s trust in the single market.[4]

These two complementary objectives (improvement and harmonization) have been at the core of the design of the European corporate governance framework. Although these general corporate governance principles apply to both financial and non-financial institutions, the corporate governance of financial institutions requires special attention for various reasons. First, not only shareholders but also other stakeholders (like owners of deposits and clients) might act as residual claimants. Second, a crisis in a financial institution might spill over to the non-financial sector, and non-financial companies might not be able to continue their operations. Finally, because of the free movement of capital, the crisis can spread to many countries and many regions; thus, local legislation aimed at financial institutions in one part of the globe affects those in other regions as well. The global reach of financial institutions with local and sensitive financial regulation might have aggravated the financial crisis, making recovery difficult for economies and companies. The need to create supranational control bodies to regulate these global entities is one of the reasons behind the change in focus for regulators in the last decade from harmonization to a balance between national and supranational regulatory agencies.

3.1. Institutional framework during the pre-crisis years

In the years before the crisis (up to 2008), financial regulation was fragmented. National regulatory bodies[5] dictated the standards and compulsory regulations. The only transnational regulatory networks – the BCBS, the International Organization of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS) – had no formal authority. These three transnational agencies started their activities in the 1980s, setting recommendatory standards for the participant countries (28 jurisdictions with 45 institutions at present). They were (and still are) regulatory agencies, composed of experts with no political power. Since they do not possess any formal supranational authority, their decisions do not have legal force. They, however, expect members to implement the standards in a full, timely, and consistent manner. Nowadays, they are widely considered the standard setters for financial regulation, and their guidelines are followed by national and transnational institutions worldwide.

[2] Sarbanes-Oxley Act of 2002 Pub.L. No. 107-204 Stat 745 (July 2002).
[3] Dod-Frank Wall Street Reform and Consumer Protection Act Pub.L. 111-203 (July 2010).

[4] See European Commission Green Paper 2010/164 on the EU Corporate Governance Framework.
[5] All the regulatory agencies presented in this section are described in Table 1.

3.2. Institutional framework during the crisis (2008-2014)

In Europe, the global financial crisis led to the creation of a new European financial regulatory architecture. In 2010, three new European supervisory agencies (ESAs) were created: the EBA, the European Securities and Markets Authorities (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA).

These three European agencies – EBA, ESMA, and EIOPA – mirrored the transnational regulatory networks (BCBS, IOSCO, and IAIS), creating a new layer of regulation with no formal power. The regulatory power still lies in the European Commission, which during these years issued a set of directives to improve corporate governance in financial institutions.[6]

The financial crisis highlights the importance of adequate risk management. The regulatory interest in corporate governance moved from an agency perspective (where the objective of corporate governance was the control of the CEO and management team through direct supervision and incentive alignment) to a risk management perspective, where boards were expected to bring their expertise and know-how to improve the performance of financial institutions. European regulators responded to this challenge with the creation of the European Systemic Risk Board (ESRB) in 2010.

The three agencies for banking, securities, and insurance (BCBS, IOSCO, and IAIS), together with the ESRB, the Joint Committee of the ESAs, and the national competent or supervisory authorities of each member state (NCAs), form the European System of Financial Supervision.

3.3. Institutional framework in the post-crisis years (from 2014 onwards)

The transformations in the financial regulatory and supervisory landscape in Europe culminated in the creation of the SSM, a system of banking supervision for countries that have euro as their currency.[7] The creation of the SSM imposed an additional layer of supervision for banks in the participating states, as it comprises the ECB and the NCAs of those countries.

As stated in the ECB's "*Guide to banking supervision*" (European Central Bank, 2014) "*the SSM will not reinvent the wheel [sic] but aims to build on the best supervisory practices that are already in place*" (p. 4). The SSM is composed of the ECB and the NCAs of participating member states. As a banking supervisor, the SSM should carry out its tasks subject to, and in compliance with, the EBA's rules.

Nowadays, ECB directly supervises the 114 significant banks of the participating countries (only euro countries at present). These significant banks hold almost 82% of banking assets in the euro area (European Central Bank, 2019). Banks that are not considered significant are known as "less significant" institutions. They continue to be supervised by their national supervisors, in close cooperation with the ECB.

At the same time, guidelines and standards for corporate governance in financial institutions are issued at three levels: supranational, European, and national.

At the supranational level, bodies such as the BCBS and FSB – which are endorsed by G20 and G30 countries – provide guidelines for corporate governance and a forum for cooperation on banking supervision.

At the European level, the EBA coordinates banking supervision. As with the BCBS, it provides guidelines to improve corporate governance in financial institutions. However, it also generates binding technical standards (BTS), which are guidelines for the creation of a European Single Rulebook in banking.

Thus, the EBA is one step ahead of the other supranational institutions in terms of scope and enforcement. In terms of scope, the objectives of the EBA are more ambitious than those of BCBS: in addition to improving corporate governance standards, it aims to harmonize prudential rules in Europe. In terms of enforcement, the EBA is more than a consultative body. It not only produces guidelines – as BCBS and FSB also do – but also issues binding technical standards that will eventually be adopted by national prudential institutions.

In addition to the EBA (which encompasses both euro and non-euro countries), a system of financial supervision over euro countries – the SSM – has been in place in Europe since November 2014. The SSM promotes the single rulebook approach to the prudential supervision of credit institutions in order to enhance the robustness of the banking system in the euro area.

At the national level, the national supervisory authorities are part of the European system of banking supervision. They directly supervise financial institutions (for example, they oversee the supervision of less significant banks in the Eurozone) and have an active role in implementing guidelines and binding technical standards at the national level.

This multilayer system of regulation and supervision makes the European scenario very interesting in the international context and provides a unique setting to analyze the different regulatory and supervisory roles in Europe.

This multilayer system also facilitates the harmonization efforts of the EU, letting rules and regulations originating from Brussels to penetrate at the national level, without a need to harmonize local legislations. The EU has the regulatory capacity to enforce stricter standards, and thus, provides grounds for a "Brussels effect" (Bradford, 2012), in the financial system, where rules originating from Europe have penetrated many aspects of economic life within and outside of Europe through the process of "unilateral regulatory globalization".

---

[6] We explain these directives in more detail in the next section, "Fit and proper regulations in the European banking industry."
[7] Other EU countries that do not yet have euro as their currency can choose to participate, although none has exercised this right so far.

Table 1. Regulatory and supervisory agencies of transnational financial institutions

Panel 1A. Regulatory and supervisory agencies				
Abb.	***Name***	***Coverage***	***Function***	***Notes***
BCBS	The Basel Committee on Banking Supervision	International	Standard setter for prudential regulations of banks and provider of a forum for cooperation on banking supervisory matters.	The BCBS does not possess any supranational authority.
FSI	Financial Stability Institute	International	Supporting the implementation of global regulatory standards and sound supervisory practices by central banks and financial sector regulatory and supervisory authorities worldwide.	Consultative body
Panel 1B. Regulatory bodies and financial authorities				
Abb.	***Name***	***Coverage***	***Function***	***Notes***
BIS	Bank for International Settlements	60 central banks around the world	To foster cooperation and serve central banks in their pursuit of financial stability.	They regularly publish analysis and financial statistics that underpin policy making, academic research, and public debate.
EBA	European Banking Authority	European Union	To maintain financial stability in the EU and to safeguard the integrity, efficiency, and orderly functioning of the banking sector. To promote convergence of supervisory practices in the EU. To assess risk and vulnerabilities in the EU (pan European stress tests).	Produces BTS and guidelines.
ESMA	European Securities and Markets Authority	European Union	One of the three ESAs (EBA, ESMA, and EIOPA)	EBA, ESMA, EIOPA, ESRB, the Joint Committee of the ESAs, and the national competent authorities form the European System of Financial Supervision (ESFS).
EIOPA	European Insurance and Occupational Pensions Authority	European Union	One of the three ESAs (EBA, ESMA and EIOPA)	EBA, ESMA, EIOPA, ESRB, the Joint committee of ESAs, and the national competent authorities form the ESFS.
ECB	European Central Bank	European Union (euro countries)	ECB has as main roles to manage the euro, keep prices stable and conduct the EU economic & monetary policy.	As the European banking supervisor, the ECB closely cooperates with the ESAs, especially the European Banking Authority. ECB and the national supervisory authorities form the Single Supervisory Mechanism.
SRB	Single Resolution Board	European Union	Central resolution authority within the Banking Union. To ensure (together with national resolution authorities) an orderly resolution of failing banks with minimal costs to task payers and to the real economy.	Single Resolution Mechanism (SRB + national resolution authorities)
ESFS	European System of Financial Supervision	European Union	Its main task is to ensure consistent and appropriate financial supervision throughout the EU. The ESFS covers both macro-prudential and micro-prudential supervision.	The ESFS is a network centered around the three European Supervisory Authorities, the ESRB, and national supervisors.
Panel 1C. Other financial institutions				
Abb.	***Name***	***Coverage***	***Function***	***Authority***
FSB	Financial Stability Board	G20	Monitors and assesses vulnerabilities affecting the global financial system and proposes actions needed to address them.	Periodically publishes a compendium of standards, which are internationally accepted as important for sound, stable, and well-functioning financial systems.
ESRB	European Systemic Risk Board	European Union	Macro-prudential oversight of the financial system within the European Union.	

4. FIT AND PROPER REGULATIONS IN THE EUROPEAN BANKING INDUSTRY

Financial conglomerates are often complex groups with multiple regulated and unregulated financial and non-financial entities. Given this inherent complexity, corporate governance must carefully consider and balance the diverse interests of the recognized stakeholders of the ultimate parent, as well as the regulated financial and non-financial entities of the group. The governance system should put in place a common strategy that supports the desired balance and ensure that the regulated entities comply with the guidelines on an individual and aggregate basis. This governance system is the fiduciary responsibility of the board of directors. When assessing corporate governance across a financial conglomerate, supervisors should apply these principles in a manner that is appropriate to the relevant sectors and the supervisory objectives of those sectors. Different supranational organizations issued guidelines throughout our analysis period to assess the adequacy requirements for directors to hold their board positions. All these guidelines – presented in Table 2 – share the common view that directors must have adequate time and expertise to perform their duties.

The first corporate governance guideline specifically designed for financial conglomerates (the first corporate governance guidelines, the "*OECD principles of corporate governance*" were issued in 1999; they were designed for both financial and non-financial entities, and were revised in 2004 and 2015 (current as of August 2020)) is the "*Compendium of documents produced by the joint forum*" jointly released by the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, and the International Association of Insurance Supervisors in 1999. This first compendium, named "*Enhancing corporate governance for banking organizations*", was not intended to establish a new regulatory framework layered on top of the existing national legislation, regulation, or codes, but was rather intended to assist banking organizations in enhancing their corporate governance frameworks and to assist supervisors in assessing the quality of these frameworks.

In these first guidelines, recommendations on the adequacy of directors' qualification were limited (if not absent). The document dealt with issues of capital adequacy, such as the development of measurement techniques to capture the capital ratio for the banking, securities, and insurance sectors, and guidelines for risk concentration management practices of financial conglomerates.

This situation changed drastically in the wake of the financial crisis with the development of a new set of guidelines, in which comments on the compendium were included. The fit and proper requirements appeared for the first time in the 2006 version of the joint guidelines and were expanded after the crisis, in the G20/OECD corporate governance guidelines of 2015, where the functions and responsibilities of the board were enumerated and the need of independence stated.

Table 2. Fit and proper regulations and other legal acts with an impact on the European financial system

Panel 2A. Fit and proper guidelines in Europe
"OECD principles of corporate governance" issued June 21 by the OECD, 1999 (revised 2004 and 2015)
"Enhancing corporate governance for banking organizations" issued by BCBS, IOSCO, IAIS, 1999
"Enhancing corporate governance for banking organizations" issued by BCBS, IOSCO, IAIS, 2006 (superseded by the 2010 document)
"Principles for enhancing corporate governance" issued by BCBS, BIS 2010 (a revised version of this document was published in 2014)
"Principles for the supervision of financial conglomerates" by BCBS, IOSC and IAIS, 2012
"Corporate governance principles for banks" issued by BCBS (2015) (effective as of July 29, 2019)
"Guidelines on the assessment of the suitability of members of the management body and key function holders under Directives 2013/36/EU and 2014/65/EU"; joint ESMA and EBA guidelines EBA/GL/2017/12
"Guidelines on the assessment of the suitability of members of the management body and key function holders," EBA November 2012, EBA/GL/2012/06, guidelines issued pursuant to Article 16 of Regulation (EU) 1093/2010 of the EP and of the Council of November 24, 2010
Panel 2B. Regulations with content regarding fit and proper criteria in Europe
Directive 2004/39/EC of the European Parliament and of the Council of April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC
Directive 2013/34/EU of the European Parliament and of the Council of June 26, 2013, on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC
Directive 2013/36/EU of the European Parliament and of the Council (CRD IV) of June 26, 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
Directive 2014/65/EU of the European Parliament and of the Council (MiFID II) of May 15, 2014, on markets in financial instruments and amending Directives 2002/92/EC and 2011/61/EU
Directive 2014/95/EU of the European Parliament and of the Council of October 22, 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups
Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26, 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
Council Regulation (EU) No 1024/2013 of October 15, 2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions
Regulation (EU) No 468/2014 of the European Central Bank of April 16, 2014, establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation)
Regulation (EU) No 806/2014 of the European Parliament and of the Council of July 15, 2014, establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010
Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures/*COM/2012/0614 final – 2012/0299 (COD)*

4.1. Fit and proper requirements during the pre-crisis years

In the year 2006, a newer version of the joint guidelines – which retained the structure of the 1999 paper – was published, with due consideration to the comments received during the consultative period. The adequacy requirements for board members (the fit and proper criteria) are clearly defined in principle 1 of this guide. Principle 1 states that "*board members should be qualified for their positions, have a clear understanding of their role in corporate governance and be able to exercise sound judgement about the affairs of the bank*". To do so, the board members should, among others, "*commit sufficient time and energy to fulfil their responsibilities"; "develop and maintain an appropriate level of expertise as the bank grows in size and complexity";* and *"promote bank safety and soundness, understand the regulatory environment and ensure the bank maintains an effective relationship with supervisors*" (BCBS, 2006, p. 6).

With respect to the independence of directors, principle 1 requires that directors should "*avoid conflict of interest or the appearance of conflicts in their activities with, and commitments to, other organizations". They should also "recuse themselves from decisions when they have a conflict of interest that makes them incapable of properly fulfilling their duties to the bank*" (BCBS, 2006, p. 6).

4.2. Fit and proper requirements during the crisis years (2008-2014)

In October 2010, the BCBS published a new set of guidelines, called "Principles for enhancing corporate governance". The fit and proper requirements for owners, board members, and senior managers are expressed in principle 16: "*… supervisors should have the ability to assess the fitness and propriety of significant bank owners as well as board members and senior managers*" (BCBS, 2010, p. 6).

In 2012, the "*Principles for the supervision of financial conglomerates*" were published. These were the joint effort of the BCBS together with the IOSCO and IAIS. These principles were intended to provide national authorities, standard setters, and supervisors with a set of internationally agreed principles that support consistent and effective supervision of financial conglomerates, especially those active across borders.

In substance, these sets of principles are relatively equivalent to the original guidelines of 1999. Both state that key persons of a financial conglomerate (shareholders, managers, directors) who exert a material influence shall have soundness and integrity. According to both sets of principles, qualification tests should be run, and supervisors should communicate with the financial conglomerates if their key persons do not meet the fitness requirements.

However, note that the 2012 principles provide more specific requirements for key persons in financial institutions. Section 12 of the 2012 Principles, called "Suitability of board members, senior managers, and key persons in control functions", states that "*supervisors should seek to ensure that the board members, senior managers and key persons in control functions in the various entities in a financial conglomerate possess integrity, competence, experience and qualifications to fulfil their role and exercise sound objective judgement*" (BCBS, 2012, p. 18). Furthermore, the 1999 Principles impose requirements on supervisors and financial conglomerates, while the 2012 Principles often set up an objective (using the words "*should seek to*" instead of "*should require*").

The second notorious difference refers to the more prominent role of supervisors. The role of the supervisor is enhanced in the new set of principles. Principle 43 in the 1999 guidelines require "*mechanisms to be in place to ensure that supervisors are advised, at the authorization stage, of the persons who can exert a material influence and that they are notified of any change*" (BCBS, 2012, p. 46). By contrast, the 2012 guidelines state, "*supervisors should require that the governance framework respects the interests of policy holders and depositors where relevant, and it should include adequate policies and processes that enable potential intra-group conflicts of interest to be avoided, and actual conflicts of interest to be identified and managed*" (BCBS, 2012, p. 18).

The same guidelines say, "*The 2012 Principles reaffirm the importance of fit and proper principles, through a high-level principle relating to the suitability of persons involved in the management and control of financial conglomerates. They also provide, through a series of new high-level principles, guidance for supervisors intended to ensure the existence of a robust corporate governance framework for financial conglomerates. These new high-level principles relate to the structure of the financial conglomerate, the responsibilities of the board and senior management, the treatment of conflicts of interest and remuneration policy*" (BCBS, 2012, p. 4). Finally, in Section 10 the role of supervisors is newly reinforced: "*supervisors should seek to ensure that the financial conglomerate establishes a comprehensive and consistent governance framework across the group that addresses the sound governance of the financial conglomerate, including unregulated entities, without prejudice to the governance of individual entities in the group*" (BCBS, 2012, p. 4).

In Europe, the EU applied the 2012 recommendations made by the BCBS, IOSC, and IASIS, in its 1024/2013 council regulation. The Council Regulation (EU) No 1024/2013 requires supervisors "*to ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose requirements on credit institutions to have in place robust governance arrangements, including the fit and proper requirements for the persons responsible for the management of credit institutions, risk management processes, internal control mechanisms, remuneration policies and practices and effective internal capital adequacy assessment processes, including Internal Ratings Based models*" (European Council, 2013, p. L287/74).

Article 16.2 of the same document provides as follows: "*For the purposes of Article 9(1), the ECB shall have, in particular, the [power to remove] at any time members from the management body of credit institutions who do not fulfil the requirements set out in the acts referred to in the first subparagraph of Article 4(3)*" (European Council, 2013, p. L287/82).

4.3. Fit and proper requirements in the post-crisis years (from 2014 onwards)

In Europe, fit and proper regulations are still fragmented despite efforts towards harmonization. Sabine Lautenschläger, in a keynote speech at the Workshop of the European Banking Institute (EBI) hosted by the ECB in Frankfurt on January 27, 2016, said: "*Much has indeed been done to harmonize regulation, both in Europe and worldwide. [...] However, these attempts have not been sufficient to fully erase national differences. […] The regulatory landscape in Europe is still fragmented. […] In extreme cases, we are faced with 19 different legislations. And in many cases, we indeed have to judge similar situations in a dissimilar way. […] There are many unjustified differences. Let me give you an example: as you know, members of banks' management bodies have to fulfil 'fit and proper' requirements. And here, we see very diverse rules across Europe. In some countries, for instance, the supervisor assesses not only appointments of members of management bodies, but also appointments of 'key function holders'. As regards the fit and proper assessment itself, there are further differences: some national authorities make use of questionnaires to be answered by the candidates, others do not. Some national authorities conduct face-to-face interviews with new members of the board, others do not. In some countries, there are timelines for conducting the fit and proper assessment with specific, rather short deadlines, whereas in others there are no such timelines. Even the criteria for assessing the suitability of candidates are implemented and interpreted differently across the various euro area countries*" (Lautenschläger, 2016)

This fragmentation is exemplified by the way financial conglomerates are supervised in Europe: banks in the Eurozone, considered of interest, are supervised by the SSM and the ECB, while financial institutions (not considered of special interest) and those in countries outside the Eurozone are directly supervised by their NCAs.

In an effort to surpass this fragmentation, in 2017, the EBA and the ESMA published their joint guidelines to assess the suitability of the members of the management body and key function holders (EBA-GL-2017-12), which came into force on June 30, 2018 (and is valid as of July 2019) and apply to competent authorities across the EU, as well as to institutions on an individual and consolidated basis. These guidelines were drafted in accordance with Article 91(12) of Directive 2013/36/EU (CRD IV) and Article 9 of Directive 2014/65/EU (MiFID II).

Despite recurring fragmentation, the effort to improve the competence levels of directors on the boards of financial institutions has resulted in a new scenario where transnational institutions' financial performance, corporate governance, and board design are supervised, both quantitatively and qualitatively, so that the European financial system operates efficiently.

Directors in banks directly supervised by the ECB (significant banks in the Euro area) should meet the five fit and proper criteria set out in the Capital Requirement Directive.[8] These five criteria (see Table 3) are: 1) knowledge, skill, and experience, 2) reputation, 3) conflict of interest, 4) time commitment, and 5) collective suitability of the board.

Table 3. Fit and proper criteria

Criteria	*Description*
Knowledge, skills, and experience	Does the candidate have the knowledge, skills, and experience necessary to take on a specific role in the bank?
Reputation	Does the candidate have a criminal record or a history of administrative or tax irregularities?
Conflict of interest	Directors must be able to act free of external influences when making decisions. Does the candidate have any conflict of interest that may hinder objective decision-making?
Time commitment	Is the candidate able to devote sufficient time to the proposed role in the bank?
Collective suitability of the board	Considering the added value of a particular candidate for the board as a whole, how does the candidate fit with its overall composition?

These guidelines relate closely to the latest (valid as of July 2019) supranational corporate governance guidelines for banks, published by the BCBS in July 2015.[9]

Section 2 of the BCBS guidelines refers to board qualifications and composition. Principle 51 states that "*the selection process should include reviewing whether board candidates: 1) possess the knowledge, skills, experience and, particularly in the case of non-executive directors, independence of mind given their responsibilities on the board and in the light of the bank's business and risk profile; 2) have a record of integrity and good repute; 3) have sufficient time to fully carry out their responsibilities; and 4) have the ability to promote a smooth interaction between board members*" (BCBS, 2015, p. 13).

Additionally, the principle 55 states that "*the board should ensure that members participate in induction programs and have access to ongoing training, in order to help board members to acquire, maintain, and enhance their knowledge and skills*" (BCBS, 2015, p. 14).

However, one of the main differences between the ECB and BCBS guidelines relates to the level of enforcement. In the BCBS principles, the enforcement of the fit and proper criteria is left to the banks. The BCBS guidelines state that "*if a board member ceases to be qualified or is failing to fulfil his or her responsibilities, the board should take appropriate actions as permitted by law, which may include notifying their banking supervisor*" (BCBS, 2015, p. 13).

By contrast, the creation of the SSM and the latest fit and proper guidelines for banks in the Eurozone imply that the ECB can now refuse to approve a candidate proposed by a bank for a board position (a situation that was not possible before) and has a de facto obligation to fulfil the criteria (an obligation that was not present before). Since 2014, the ECB has been the responsible body to decide on the appointment of all members of the management bodies of significant credit institutions that fall under its direct supervision. In its guidelines, the ECB expressly states that it would comply with national law and any applicable suitability guidelines developed by the EBA and the ESMA.

This difference in the level of enforcement makes the regulation in Europe more stringent for

[8] Directive 2013/36/EU of the European Parliament and of the Council (CRD IV).

[9] A draft version for consultation was already available in October 2014.

banks considered of interest in the Eurozone. While the ECB can now refuse to approve a candidate for a board position in a financial conglomerate that operates in the euro area, neither the BCBS nor other supranational institution has such power.

This means that – as our initial hypothesis suggests – boards of banks and financial institutions supervised by the ECB stand to stricter fit and proper standards and stricter enforcement. As these banks have only one board but operate in different jurisdictions (inside and outside Europe), they apply the same highest standards for boards in all jurisdictions. This way the EU regulatory power is externalized to third countries via a market mechanism, generating a "Brussels effect" in the banking industry.

5. CONCLUSION

Following the recent financial crisis, national authorities as well as international and transnational agencies adopted new corporate governance guidelines for banks and financial institutions. As the financial crisis evolved into a sovereign debt crisis, regulators in Europe realized that soft law recommendations and voluntary compliance would not suffice (Arner & Taylor, 2009). National regulators, taking a cue from the European agencies and the BCBS, directed banks to follow the corporate governance principles that until then had been voluntary.

In this paper, we propose that this enhancement was the seed of a "Brussels effect" in the banking industry, by which international banks operating across jurisdictions choose to adopt the stricter regulatory standards in all the markets in which they operate. As banks have only one board of directors, they have an incentive (and obligation) to adopt the strictest regulation of all markets where they operate. Via this market mechanism, the European Union externalizes its standards to jurisdictions beyond the limits of its regulatory authority.

Our proposal is based on a detailed comparative analysis of the fit and proper regulations issued by the EU and by supranational organizations such as the BCBS. These regulations outlined the need to upgrade the expertise of board members to match their supervisory function in relation to financial institutions. They also stressed the fact that board members needed to allocate sufficient time to their duties and that a certain degree of board diversity was desirable to avoid group thinking and herding behavior. The adequacy criteria for board members (the fit and proper criteria) were updated and both qualitative and quantitative controls were introduced. Banks in the Eurozone were given an additional layer of control with the creation of the SSM and the direct supervision of significant banks by the European Central Bank, complementing the NCAs of member states. As a result of these regulatory and institutional changes, corporate governance standards are nowadays stricter than in the pre-crisis years, and governance of financial institutions is more harmonized across Europe than it was before the crisis.

Moreover, as a result of the recent reforms, the EU has become a pacesetter (we borrow this terminology from Borzel (2002) as cited in Quaglia and Spenszharova (2017)) in international standard setting, promoting international financial standards and "hardening" the soft law recommendations through the use of directives and binding technical standards as regulatory instruments. Supervisory authorities have proved to be more efficient in achieving higher governance standards than self-regulation by banks, which was the norm before 2008.

This research contributes to the literature on fit and proper regulation – which is mainly empirical in nature – providing a theoretical framework to understand the current design of corporate boards in banks and financial institutions worldwide. A clear extension of this project would involve the analysis of current boards in banks and financial institutions worldwide, measuring to what extend have changed as a result of the reforms imposed at the European level.

REFERENCES

1. Acharya, V. V., Borchert, L., Jager, M., & Steffen, S. (2018). *Kicking the can down the road: Government interventions in the European banking sector.* https://doi.org/10.2139/ssrn.3253517
2. Adams, R. B. (2012). Governance and the financial crisis. *International Review of Finance, 12*(1), 7-38. https://doi.org/10.1111/j.1468-2443.2011.01147.x
3. Adams, R. B., & Mehran, H. (2012). Bank board structure and performance: Evidence for large bank holding companies. *Journal of Financial Intermediation, 21*(2), 243-267. https://doi.org/10.1016/j.jfi.2011.09.002
4. Aebi, V., Sabato, G., & Schmid, M. (2012). Risk management, corporate governance, and bank performance in the financial crisis. *Journal of Banking & Finance, 36*(12), 3213-3226. https://doi.org/10.1016/j.jbankfin.2011.10.020
5. Aggarwal, R., Erel, I., Ferreira, M., & Matos, P. (2011). Does governance travel around the world? Evidence from institutional investors. *Journal of Financial Economics, 100*(1), 154-181. https://doi.org/10.1016/j.jfineco.2010.10.018
6. Anderson, R. C., & Fraser, D. R. (2000). Corporate control, bank risk taking and the health of the banking industry. *Journal of Banking & Finance, 24*(8), 1383-1398. https://doi.org/10.1016/S0378-4266(99)00088-6
7. Anginer, D., Demirguc-Kunt, A., Huizinga, H., & Ma, K. (2018). Corporate governance of banks and financial stability. *Journal of Financial Economics, 130*(2), 327-346. https://doi.org/10.1016/j.jfineco.2018.06.011
8. Armour, J., Awrey, D., Davies, P. L., Enriques, L., Gordon, J. N., Mayer, C., & Payne, J. (2016). *Bank governance* (European Corporate Governance Institute (ECGI), Law Working Paper No. 316/2016). Retrieved from https://ecgi.global/sites/default/files/working_papers/documents/SSRN-id2793112.pdf
9. Arner, D. W., & Taylor, M. (2009). The global financial crisis and the financial stability board: Hardening the soft law of international financial regulation? *University of New South Wales Law Journal, 32*, 488-513. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1520887
10. Arranz-Aperte, L. (2013). *CEO compensation, board of directors and corporate governance in European companies* (Ph.D. thesis, Autonomous University of Madrid). https://doi.org/10.13140/2.1.3334.8484

11. Basel Committee on Banking Supervision (BCBS). (2006). *Enhancing corporate governance for banking organizations.* Retrieved from https://www.bis.org/publ/bcbs122.pdf
12. Basel Committee on Banking Supervision (BCBS). (2010). *Principles for enhancing corporate governance.* Retrieved from https://www.bis.org/publ/bcbs176.htm
13. Basel Committee on Banking Supervision (BCBS). (2011). *Basel III: A global regulatory framework for more resilient banks and banking systems.* Retrieved from https://www.bis.org/publ/bcbs189.htm
14. Basel Committee on Banking Supervision (BCBS). (2012). *Principles for the supervision of financial conglomerates.* Retrieved from https://www.bis.org/publ/joint29.htm
15. Basel Committee on Banking Supervision (BCBS). (2015). *Corporate governance principles for banks.* Retrieved from https://www.bis.org/bcbs/publ/d328.htm
16. Becht, M., Bolton, P., & Röell, A. (2011). Why bank governance is different. *Oxford Review of Economic Policy, 27*(3), 437-463. https://doi.org/10.1093/oxrep/grr024
17. Beltratti, A., & Stulz, R. M. (2012). The credit crisis around the globe: Why did some banks perform better? *Journal of Financial Economics, 105*(1), 1-17. https://doi.org/10.1016/j.jfineco.2011.12.005
18. Berger, A. N., Imbierowicz, B., & Rauch, C. (2016). The roles of corporate governance in bank failures during the recent financial crisis. *Journal of Money, Credit and Banking, 48*(4), 729-770. https://doi.org/10.1111/jmcb.12316
19. Bernile, G., Bhagwat, V., & Yonker, S. (2018). Board diversity, firm risk and corporate policies. *Journal of Financial Economics, 127*(3), 588-612. https://doi.org/10.1016/j.jfineco.2017.12.009
20. Black, L., Correa, R., Huang, X., & Zhou, H. (2016). The systemic risk of European banks during the financial and sovereign debt crises. *Journal of Banking & Finance, 63*, 107-125. https://doi.org/10.1016/j.jbankfin.2015.09.007
21. Börzel, T. A. (2002). Member state responses to Europeanization. *Journal of Common Market Studies, 40*(2), 193-214. https://doi.org/10.1111/1468-5965.00351
22. Bradford, A. (2012) The Brussels effect. *Northwestern University Law Review, 107*(1), 1-67. Retrieved from https://scholarship.law.columbia.edu/faculty_scholarship/1966/
23. Bradford, A. (2015). Exporting standards: The externalization of the EU's regulatory power via markets. *International Review of Law and Economics, 42*, 158-173. https://doi.org/10.1016/j.irle.2014.09.004
24. Büthe, T., & Mattli, W. (2010). International standards and standard-setting bodies. In D. Coen, W. Grant, & G. Wilson (Eds.), *The Oxford Handbook of Business and Governance.* https://doi.org/10.1093/oxfordhb/9780199214273.003.0020
25. Caprio, G., Laeven, L., & Levine, R. (2007). Governance and bank valuation. *Journal of Financial Intermediation, 16*(4), 584-617. https://doi.org/10.1016/j.jfi.2006.10.003
26. Cheffins, B. R. (2015). The corporate governance movement, banks and the financial crisis. *Theoretical Inquiries in Law, 16*(1), 1-44. https://doi.org/10.1515/til-2015-003
27. Cheffins, B. R. (Ed.). (2011). *The history of U.S. corporate governance* (Vol. 1). https://doi.org/10.4337/9781784714093
28. Cheng, L. T. W., Chan, R. Y. K., & Leung, T. Y. (2010). Management demography and corporate performance: Evidence from China. *International Business Review, 19*(3), 261-275. https://doi.org/10.1016/j.ibusrev.2009.12.007
29. Correa, R., Lee, K.-H., Sapriza, H., & Suarez, G. A. (2014). Sovereign credit risk, banks' government support, and bank stock returns around the world. *Journal of Money, Credit and Banking, 46*(s1), 93-121. https://doi.org/10.1111/jmcb.12080
30. De Haan, J., & Vlahu, R. (2016). Corporate governance of banks: A survey. *Journal of Economic Surveys, 30*(2), 228-277. https://doi.org/10.1111/joes.12101
31. Dermine, J. (2013). Bank regulations after the global financial crisis: Good intentions and unintended evil. *European Financial Management, 19*(4), 658-674. https://doi.org/10.1111/j.1468-036X.2013.12017.x
32. Elyasiani, E., & Zhang, L. (2015). Bank holding company performance, risk, and "busy" board of directors. *Journal of Banking & Finance, 60*, 239-251. https://doi.org/10.1016/j.jbankfin.2015.08.022
33. Erkens, D. H., Hung, M., & Matos, P. (2012). Corporate governance in the 2007-2008 financial crisis: Evidence from financial institutions worldwide. *Journal of Corporate Finance, 18*(2), 389-411. https://doi.org/10.1016/j.jcorpfin.2012.01.005
34. European Central Bank. (2014). *Guide to banking supervision.* Retrieved from https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssmguidebankingsupervision201411.en.pdf
35. European Central Bank. (2016). *ECB banking supervision: SSM priorities 2016.* Retrieved from https://www.bankingsupervision.europa.eu/banking/priorities/html/index.en.html
36. European Central Bank. (2019). *Single supervisory mechanism.* Retrieved from https://www.bankingsupervision.europa.eu/about/thessm/html/index.en.html
37. European Council. (2013). *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.* Retrieved from https://eur-lex.europa.eu/eli/reg/2013/1024/oj
38. Fernandes, C., Farinha, J., Martins, F. V., & Mateus, C. (2018). Bank governance and performance: A survey of the literature. *Journal of Banking Regulation, 19*, 236-256. https://doi.org/10.1057/s41261-017-0045-0
39. Fernandes, N., & Fich, E. M. (2016). *Are outside directors with greater board tenure valuable? Evidence from the last credit crisis.* https://doi.org/10.2139/ssrn.1409557
40. Fich, E. M., & Shivdasani, A. (2006). Are busy boards effective monitors? *The Journal of Finance, 61*(2), 689-724. https://doi.org/10.1111/j.1540-6261.2006.00852.x
41. Fich, E. M., & Shivdasani, A. (2007). Financial fraud, director reputation and shareholder wealth. *Journal of Financial Economics, 86*(2), 306-336. https://doi.org/10.1016/j.jfineco.2006.05.012
42. Financial Conduct Authority (FCA). (2016). *Business plan 2016/17.* Retrieved from https://www.fca.org.uk/publication/corporate/business-plan-2016-17.pdf
43. Financial Stability Board (FSB). (2011). *Key attributes of the effective resolution regimes for financial institutions.* Retrieved from https://www.fsb.org/wp-content/uploads/r_111104cc.pdf

44. G30 Working Group. (2013). *A new paradigm: Financial institution boards and supervisors*. Retrieved from https://group30.org/publications/detail/162
45. Grove, H., Patelli, L., Victoravich, L. M., & Xu, T. (2011). Corporate governance and performance in the wake of the financial crisis: Evidence from US commercial banks. *Corporate Governance: An International Review, 19*(5), 418-436. https://doi.org/10.1111/j.1467-8683.2011.00882.x
46. Hambrick, D. C., Cho, T. S., & Chen, M.-J. (1996). The influence of top management team heterogeneity on firms' competitive moves. *Administrative Science Quarterly, 41*(4), 659-684. https://doi.org/10.2307/2393871
47. Hau, H., & Thum, M. (2009). Subprime crisis and board (in-)competence: Private versus public banks in Germany. *Economic Policy, 24*(60), 701-752. https://doi.org/10.1111/j.1468-0327.2009.00232.x
48. Hopt, K. J. (2013). Corporate governance of banks and other financial institutions after the financial crisis. *Journal of Corporate Law Studies, 13*(2), 219-253. https://doi.org/10.5235/14735970.13.2.219
49. Houston, J. F., Lee, J., & Suntheim, F. (2018). Social networks in the global banking sector. *Journal of Accounting and Economics, 65*(2-3), 237-269. https://doi.org/10.1016/j.jacceco.2017.11.006
50. Jiraporn, P., Davidson III, W. N., DaDalt, P., & Ning, Y. (2009). Too busy to show up? An analysis of directors' absences. *The Quarterly Review of Economics and Finance, 49*(3), 1159-1171. https://doi.org/10.1016/j.qref.2008.08.003
51. John, K., De Masi, S., & Paci, A. (2016). Corporate governance in banks. *Corporate Governance: An International Review, 24*(3), 303-321. https://doi.org/10.1111/corg.12161
52. Kirkpatrick, G. (2009). The corporate governance lessons from the financial crisis. *Financial Market Trends, 96*. Retrieved from https://www.oecd.org/finance/financial-markets/42229620.pdf
53. Laeven, L., & Levine, R. (2009). Bank governance, regulation and risk taking. *Journal of Financial Economics, 93*(2), 259-275. https://doi.org/10.1016/j.jfineco.2008.09.003
54. Laeven, L., Ratnovski, L., & Tong, H. (2016). Bank size, capital and systemic risk: Some international evidence. *Journal of Banking & Finance, 69*(1), 25-34. https://doi.org/10.1016/j.jbankfin.2015.06.022
55. Larcker, D. F., So, E. C., & Wang, C. C. Y. (2013). Boardroom centrality and firm performance. *Journal of Accounting and Economics, 55*(2-3), 225-250. https://doi.org/10.1016/j.jacceco.2013.01.006
56. Lautenschläger, S. (2016). *The European banking sector – A quick pulse check*. Retrieved from https://www.bis.org/review/r161117b.pdf
57. McNulty, T., Florackis, C., & Ormrod, P. (2013). Board of directors and financial risk during the credit crisis. *Corporate Governance: An International Review, 21*(1), 58-78. https://doi.org/10.1111/corg.12007
58. Mechelli, A., & Cimini, F. (2019). Corporate governance, legal systems and value relevance of fair value estimates. Empirical evidence from the EU banking sector. *Spanish Journal of Finance and Accounting, 48*(2), 203-223. https://doi.org/10.1080/02102412.2018.1471309
59. Minton, B. A., Taillard, J. P., & Williamson, R. (2014). Financial expertise of the board, risk taking, and performance: Evidence from bank holding companies. *Journal of Financial and Quantitative Analysis, 49*(2), 351–380. https://doi.org/10.1017/S0022109014000283
60. Pathan, S. (2009). Strong boards, CEO power and bank risk-taking. *Journal of Banking & Finance, 33*(7), 1340-1350. https://doi.org/10.1016/j.jbankfin.2009.02.001
61. Pathan, S., & Faff, R. (2013). Does board structure in banks really affect their performance? *Journal of Banking & Finance, 37*(5), 1573-7589. https://doi.org/10.1016/j.jbankfin.2012.12.016
62. Quaglia, L. (2013). Financial regulation and supervision in the European Union after the crisis. *Journal of Economic Policy Reform, 16*(1), 17-30. https://doi.org/10.1080/17487870.2012.755790
63. Quaglia, L., & Spendzharova, A. (2017). Post-crisis reforms in banking: Regulators at the interface between domestic and international governance. *Regulation & Governance, 11*(4), 422-437. https://doi.org/10.1111/rego.12157
64. Rajgopal, S., Srinivasan, S., & Wong, Y. T. F. (2019). *Banks boards: What has changed since the financial crisis?* https://doi.org/10.2139/ssrn.2722175
65. Srivastav, A., & Hagendorff, J. (2016). Corporate governance and bank risk taking. *Corporate Governance: An International Review, 24*(3), 334-345. https://doi.org/10.1111/corg.12133
66. Veron, N. (2018). *EU financial services policy since 2007: Crisis, responses, and prospects* (PIIE Working Paper No. 18-6). https://doi.org/10.2139/ssrn.3210866
67. Wang, T., & Hsu, C. (2013). Board composition and operational risk events of financial institutions. *Journal of Banking & Finance, 37*(6), 2042-2051. https://doi.org/10.1016/j.jbankfin.2013.01.027