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Rescuing Comparative Law and Economics? Exploring Successes and Failures of an Interdisciplinary Experiment

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BREXIT AND A BANKING REGULATION FOR SMALL BANKS AND BUILDING SOCIETIES: A NEW MEANS OF RE-KINDLING THE COMPARATIVE (AND ECONOMIC) ANALYSIS OF LAW?!

Camilla Della Giustina & Pierre de Gioia Carabellese[*]

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Brexit, a complex and controversial phenomenon, is often discredited on this side of the English Channel. By contrast, it should pave the way to new horizons for economic-comparative legal analysis. The United Kingdom, now a real "sovereign state," is about to issue new rules, recommended by the Bank of England, in the matter of banking regulation, particularly building societies or, mutatis mutandis, cooperative banks, to use the "Continental" jargon. On the other hand, the EU remains stubbornly anchored to the principle of "One Size Fits All," a "mantra" in its initial guise, more recently a Damocles' sword that hangs on the head of several medium-small banks.
In view of this prospective scenario, the paper aims to analyse, also from an economic viewpoint, the new UK rules, as well as the benefits that they could have, in a truly comparative perspective, in the aftermath of "Brexit." Ultimately, a new proportionate "architecture" of the banking system in the EU, as far as banks are concerned, is instrumental in preventing the demise of the different banking businesses.
Paradoxically, the results of the work, beyond the merit of the legal analysis relating to the new British legal framework, shows not only that the regulation is "alive and kicking," but also that its dual interpretation, where the economic impact is taken into account, is necessary in order to avoid what probably is the dearth of vision of the current European Financial Legislation.

I. INTRODUCTION

The 2008 financial crisis could be qualified as the "kickstart" of a new era of EU regulation in the banking and financial sector. As from the dramatic events of the summer of 14 years ago, when severe insolvencies of credit institutions materialised all of a sudden and on a serial basis, the EU has "stepped up" to the plate insomuch as to legislate, more in depth, in the areas of both banking and finance. Until then, these niche sectors had highly been left to the discretion of each Member State.
In this respect, a first reference shall be made to the various components of the financial statements of banks, which have become very rigorous, complex, and detailed. A second *locus* is given by the architecture of credit institutions.[1]

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[1] D. T. Llewellyn, T. Condgon, *Bank regulation: Has the regulation pendulum swung too far?*, in J.Banking Reg. Online First Articles 25 February 2022.

The economic corollary of these two postulations is the supervision of banks, to be construed as a close "echo" of the "principles of prudence."[2] This paradigm (the banker's prudent management of the credit institution) means, in a conventional way, that credit institutions' managers should have full knowledge of the means and businesses of borrowers before lending money to these counterparties.[3]

Prudential supervision, within the broader concept of banking regulation, is a necessary element aimed at preventing the contagion of the insolvency of a bank which, ultimately, may materialize as a systemic risk. Before the 2008 financial-economic crisis, supervision was a "local job," since the supervisors were local, albeit within the EU, and did not operate according to a single mechanism. This local *modus operandi* "drove a coach and horses through" the idea of "universal bank," which, masterminded by the EU, particularly within the Second Banking Directive, had become since the late eighties the normal way for a bank to operate[4].

In the regulatory architecture preceding the 2008 financial crisis, the main objective pursued by the banking secondary legislation was to achieve better efficiency of the banking system through a risk and business line diversification. In doing so, market discipline was considered the most credible and effective safeguard against the financial risks associated with the rapid expansion of major banks.[5] This "genre" of banking regulation was defined as micro-prudential regulation, because at that time there was "no such thing" as a macro-prudential regulation.[6]

Despite the dearth of a macro-prudential regulation, the universal bank model was still the one opted for at a global level. Admittedly, the choice of the universal bank model could engender a moral hazard. On the one hand, the originate-to-distribute principle, to a certain extent entailed to the universal bank model, rendered that credit institution less prudent, as far as risk evaluation is concerned. On the other hand, the "universal bank," which started being forged on the premises of that regulation, was eventually susceptible for becoming

[2] This concept was introduced by Adam Smith to allude to a possible remedy for vices: it is not a different orientation, rather it constitutes the true ends for the human. A. Smith, *The Theory of Moral Sentiments* [1759], K. Haakonssen ed. (Cambridge: Cambridge University Press, 2002); R.P. Hanley, *Adam Smith and the Character of Virtue* (Cambridge: Cambridge University Press, 2009), 100-132.
[3] G. Rae, *The Country Banker, His Clients, Cares, and Work, from an Experience of Forty Years* (New York, Charles Scriber's Sons, 1886). For an analysis of principle of prudence in UK see D.M. Ross, *History of Banking II, 1844–1859*, vol. 5 (London: Pickering & Chatto, 1988).
[4] M. Haentjens, P. de Gioia Carabellese, *European Banking and Financial Law*, (London and New York: Routledge, 2020).
[5] G. Giombini, G. Travaglini, *La regolamentazione del sistema bancario dopo la crisi*, in Argomenti. Rivista di Economia, Cultura e Ricerca sociale, 14/2019, 7-24.
[6] In the literature, an overview of the macro-prudential regulation can be read in I. Y.-Y. Chiu, *Banking Law and Regulation* (Oxford: Oxford University Press, 2019), 189-230.

"too big to fail."[7] The latter was the adamant statement made by both politicians and supervisors in 2008, when, in contemplating the widespread debris left by the serial bank insolvencies, they assessed that no other option was on the table but to rescue with public money these "beleaguered" banks.

From a different perspective, namely in terms of supervision, financial globalization, coupled with liberalization – two elements embedded in the "global agenda," including the European one, since 1970 –slowed down the formalization of an effective, therefore universal banking supervision.[8] The asymmetry between a "giant" universal bank, in fact a number of universal banks "loitering" around the EU and in other developed economies, and "dwarves" supervisors, each of which was located in one country, became the most obvious explanation for one of the reasons, perhaps the most significant one, of the collapse of credit institutions during that period.[9]

Against the backdrop of this scenario, it is not a coincidence that one of the first steps made from the ashes of the 2008 financial crisis, was, particularly within the European Union, a major reform of the banking supervision. Thus, a number of pieces of legislation have been passed in order to overcome the pathological asymmetry highlighted above. Among the different EU statutes blossomed after the 2008 financial crisis,[10] one is worthy of a mention:

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[7] E. Avgouleas, *The Global Financial Crisis, Behavioural Finance and Financial Regulation: In Search of a New Orthodoxy*, Journal of Corporate Law Studies, 9/2015, 23- 59.

[8] Examples are the UK and Belgium. The former completed the formalization of banking supervisions with Margaret Thatcher's 'Big Bang' regulation only in 1987. E. Hotori *et al.*, *Formalization of Banking Supervision. 19th-20th Centuries* (Singapore: Palgrave Macmillan, 2022); M. Haentjens, P. de Gioia Carabellese, *European Banking and Financial* Law, 2nd ed. (London and New York: Routledge, 2020, 110).

[9] M. Haentjens, P. de Gioia Carabellese, *European Banking and Financial* Law, 2nd ed. (London and New York: Routledge, 2020, 15), highlight this aspect:

"The introduction of a single market for the European banking sector, which, as just indicated, began with Directive 73/183/EEC of 16 July 1973, and, more generally, the liberalisation of the European financial markets, led to a significant increase in cross-border banking services and a booming international financial sector. A truly European integration of supervisors, however, remained absent. Therefore, until relatively recently, a paradox of sorts prevailed within the EU where, on the one hand, a fully integrated market for credit institutions reaped the benefits of a single market which afforded them the tools to expand and operate at a greater pace across the EU. On the other hand, the fragmentation of supervisors as numerous as the various countries constituting the EU, was not fit to effectively supervise the systemic dimensions of this integrated market. In hindsight, this asymmetry may have been a contributory factor in the collapse of several major financial institutions in the late 2000s, as these institutions proved to be too big and pan-European to be supervised by the assemblage of authorities existing in each respective country. In October 2008, Jacques de Larosière de Champfeu was therefore entrusted with the mandate to chair a group of experts to devise practical proposals in the area of financial regulation and supervision. The report was commissioned against the backdrop of economic crisis and recession. In the first months of the global financial crisis, which led to a eurozone public debt crisis, it was felt that the EU faced a critical juncture: the EU could either fall apart, or strengthen cooperation so as to provide a united front against financial recession. The latter solution found the favour of the De Larosière Report which essentially emphasised three steps to guard against the likelihood of a future collapse: (i) a new regulatory agenda; (ii) a stronger coordinated supervision; and (iii) effective crisis management procedures".

[10] The first one of which may be regarded Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies Credit Rating Agency Regulation (as amended by Regulation (EC) No 462/2013). It is well-known that credit rating agencies were among the usual suspects, not the only ones, responsible for the financial crisis.

the EU Regulation No. 1024/2013,[11] whereby the Single Supervisory Mechanism (SSM) was established, consisting of the European Central Bank (ECB) and the national supervisory Authorities of the participating Member States.[12]

II. A NEW ECONOMIC SCENARIO FOR THE UK MARKET REGULATION

The turning point in the relationship between the UK and the UE was – without any doubt– the British referendum on European Union membership (2016). Following that, in March 2017 the British government called upon Article 50 of the Treaty on the European Union and, consequently, officially started negotiating the UK's withdrawal from the EU. As a result of this process, at the end of January 2020, the UK left the EU.[13]

[11] 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.

[12] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 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). The European Banking Union has been adopted in one day, the so-called Super Tuesday, 15 April 2014. On that day, measures were adopted to set up what is now called the Banking Union. These measures specifically concern the Eurozone, but some apply to the Union as a whole. In general, the Banking Union, as initially envisaged by the European Commission, consists of three pillars: (i) the Single Supervisory Mechanism (SSM); (ii) the Bank Recovery and Resolution framework and Single Resolution Mechanism (SRM); and (iii) the EU Deposit Guarantee Scheme. The third pillar has not been implemented yet. As far as the SSM literature is concerned, see D. Alford, *Is a Single Bank Supervisor Inevitable throughout the European Union?*, in 15(58) Int. In-house Counsel J. (2022), Online; G. Bassani, *Of Viruses, Economic Crises and Banks: the European Banking Union and the Response to COVID-19*, in 32(3) Eur. Bus. L. Rev. 437-471 (2021); G. Bassani, *The Centralisation of Prudential Supervision in the European Union: the Emergence of a New "Conventional Wisdom" and the Establishment of the SSM*, in 31(6) Eur. Bus. L. Rev. 1001-1022 (2020); A. Biondi, A. Spano, *The ECB and the Application of National Law in the SSM: New yet Old*, in 31(6) Eur. Bus. L. Rev. 1023-1046 (2020); P. Faraguna, D. Messineo, *Light and Shadows in the Bundesverfassungsgericht's Decision Upholding the European Banking Union*, in 57(5) Common Mkt. L. Rev. 1629-1646 (2020); G. Zagouras, *Sanction Powers and Proceedings of the European Central Bank in the Single Supervisory Mechanism*, in 34(12) J.I.B.L.R. 438-446 (2019); M. De Poli, P. de Gioia Carabellese, *Towards a Full Harmonization of the European Banking Regulation: Dilemmas in a Legal Discourse between Regulation and Enforcement*, in 26(2) Maastricht J. Eur. Comp. L. 190-216 (2019); M. Bozina Beros, *The ECB's Accountability within the SSM Framework: Mind the (Transparency) Gap*, in 26(1) Maastricht J. Eur. Comp. L. 122-135 (2019); P. Nicolaides, *Accountability of the ECB's Supervisory Activities (SSM): Evolving and Responsive*, in 26(1) Maastricht J. Eur. Comp. L. 136-150 (2019); A.H. Turk, N. Xanthoulis, *Legal Accountability of European Central Bank in Bank Supervision: a Case Study in Conceptualising the Legal Effects of Union Acts*, in 26(1) Maastricht J. Eur. Comp. L. 151-164 (2019); E. Howell, *EU Agencification and the Rise of ESMA: are its Governance Arrangements Fit for Purpose?*, in 78(2) Cambridge L.J. 324-354 (2019); A. Dumitrescu-Pasecinic, *International Law in the European Banking Union: the Case of non-Euro Periphery*, in 44(3) Eur. L. Rev. 359-382 (2019); F. Amtenbrink, M. Markakis, *Towards a Meaningful Prudential Supervision Dialogue in the Euro Area? A Study of the Interaction between the European Parliament and the European Central Bank in the Single Supervisory Mechanism*, in 44(1) Eur. L. Rev. 3-23 (2019); A. Miglionico, *Rethinking the Resolution Tools for Distressed Banks: a New Challenge in the Banking Union?*, in 33(9) J. Int. Banking L. and Reg. 314-320 (2018); M. Goldmann, *United in Diversity? The Relationship between Monetary Policy and Prudential Supervision in the Banking Union*, in 14(2) Eur. Const. L. Rev. 283-310 (2018); P. Weismann, *The ECB's Supervisory Board under the Single Supervisory Mechanism (SSM): a Comparison with European Agencies*, in 24(2) Eur. Pub. L. 311-334 (2018); E. Chiti, F. Recine, *The Single Supervisory Mechanism in Action: Institutional Adjustment and the Reinforcement of the ECB Position*, in 24(1) Eur. Pub. L. 101-124 (2018); A. Pizzolla, *The Role of the European Central Bank in the Single Supervisory Mechanism: a New Paradigm for EU Governance*, in 43(1) Eur. L. Rev. 3-23 (2018).

[13] S. James, L. Quaglia, *Rule maker or rule taker? Brexit, finance and UK regulatory autonomy,* in *Int. Pol. Sci. Rev.* Special Issue OnlineFirst 5 November 2020, 1-14.

An important outcome of Brexit is concerned with the legal implications for the financial sector: London, in fact, was and still is a leading international financial hub, in such a way that the UK is often defined the "Europe's investment banker."[14]

In the wake of those events, the United Kingdom formally left the European Union at 11:00 pm, on 31 January 2020, whereas, during the period from such time until 11:00 pm on 31 December 2020, there was a transaction period ("Brexit Transition Period"), during which the UK was regarded as a Member State of the Union, albeit departing. Until 31 December 2020, the EU legislation that was directly applicable in the UK up to that date was transposed into a "retained EU law." This was possible in pursuance of the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020 (as so amended, the "EUWA").

A consequence of Brexit is the loss for British enterprises of passporting rights in the single market, and therefore the impossibility, specifically for banking businesses, to have direct access to the large financial market of the European Union. The financial market of the EU, despite Brexit, still comprises more than 450,000 million potential customers, *de facto* one of the largest markets in the world. It is true that an opposite consequence of Brexit pertains to the loss, for EU clients, of their rights to have direct access to the UK financial market, although, from a mere quantitative point of view, the figures that the EU single market can still boast despite Brexit – admittedly Brexit has meant a loss of no more than 10% of the previous EU market - should more than compensate the potential damage arising out of the British departure from the UK.

Whether or not Brexit is a "gain" or a "loss" for the two opposing players, undeniably the UK is now in a position to decide on its future, and this is not simply a political slogan. The UK is empowered to set up its own rules in the banking regulation, including banking supervision.

As far as the latter is concerned, first and foremost, the UK Government could better define the bank prudential regulation in a way that it is different from the EU capital requirements rules, although the power of London in this area cannot considered unfettered, since any too *sui generis* regulation may potentially alienate the UK from international bodies and frameworks operating in a global way: *inter alia*, the "G7" and "Basel."[15]

At a second stage, which is a consequence of the previous one, there is an option for the Bank of England to implement a different but at the same time holistic style of banking

[14] M. Carney, Oral Evidence. 11 January, Treasury Committee, House of Commons, London, 2017.

[15] For any reference to Basel and its different versions, see, e.g., R. Cranston *et al.*, *Principles of Banking Law*, 3rd ed. (Oxford: Oxford University Press, 2017), 19ff.; M. Haentjens, P. de Gioia Carabellese, *supra* note 7.

supervision. This could potentially pursue the final goal of boosting the international competitiveness of the City of London.[16]

III. THE UK'S NEW POTENTIAL REGULATION OF BUILDING SOCIETIES

Bearing this in mind, the Prudential Regulation Authority (PRA)[17] has disseminated a Discussion Paper[18] in order to explore the possible options for the development of a simpler prudential framework[19] for banks and building societies that are neither "systemically important," nor internationally active. The main objective of this prospective framework is to combine a resilient regulation with a dynamic and diverse banking sector in the UK. The rationale behind this framework is that the UK, far from being exclusively the City of London and its major financial giants headquartered there, is a country with its own countryside and towns, rife with small credit institutions with no ambition to operate globally, rather with the sincere intention to operate efficiently and in a reliable way in a local environment.

About this new draft of regulation, the PRA qualifies this prospective piece of legislation as a "strong and simple framework." In other words, the intention of the British Supervisor is to finalize, after the necessary approval of the UK Parliament, a statute which, first and foremost, would be consistent with the Basel Committee on Banking Supervision's Core Principles for Effective Banking Supervision.[20] Secondly, this piece of legislation should be simpler than the Basel standards normally applicable to large and internationally active banks. The central idea of PRA is to implement a concept of proportional banking regulation, aimed at removing the complexity of the rules which need be associated with more complex firms, such as the largest banks. The result is that, once the new framework is approved, a simple

[16] A. Lehmann, *UK banks in international markets. Implications of UK-euro area divergence in regulation and supervisory practice*, Economic Governance Support Unit (EGOV) Directorate-General for Internal Policies, 2021.

[17] In the UK, the same global financial crisis brought to light the inability of supervisors to prevent the collapse of major financial institutions. This stressed the need for a creation of a new system of supervision, so that as of 1 April 2013, on the basis of the UK Financial Services and Markets Act 2000 (FSMA), the Financial Services Authority was broken up and the Financial Conduct Authority and the Prudential Regulation Authority took charge in the UK of financial conduct and prudential supervision, respectively. Also in the EU, profound changes were effectuated to the supervisory framework, which will be discussed below. In between the pushes for more stringent regulation, harmonisation and the restructuring of supervision as just discussed, periods of liberalisation can be discerned. The period between the 1970s and 1990s, for instance, may be characterised as a period in which several jurisdictions, including the US and UK, profoundly liberalised their financial markets. Cfr. M. Haentjens, P. de Gioia Carabellese, *supra* note 7, 4-5.

[18] Bank of England, Prudential Regulation Authority, Discussion Paper DP1/21, *A strong and simple prudential framework for non-systemic banks and building societies*, April 2021.

[19] It is important to highlight that simpler is not synonym with less resilient.

[20] Basel Committee on Banking Supervision, 15 December 2019.

regime would suffice for purposes of supervision to the smallest firms. By contrast, the second level of rules, the more complex ones, will be applicable only to major banks.

The criteria to be used to identify which firms should be in the "mirror" of this first layer of rules (with the exclusion of the more complex ones) are based on certain factors: the geographical footprint; the size; the activities; and, finally, the risk exposures.

Furthermore, the PRA has also considered the benchmarks and has identified two typologies of approach. The first one, which can be called "streamlined," whose starting point is the already existing prudential framework. From this, some aspects concerned with some elements which are too over-complex for smaller firms, shall be modified. The second one, that can be called "focused" approach, is concentrated on a much narrower, but more conservatively calibrated, set of prudential requirements. The second one will apply to major banks.

Differently from the envisaged changes, in fact a "sea-change" across the Channel, the existing UK prudential framework for small banks and building societies is still, *de facto*, the legacy of pieces of legislation coming from Brussels. The striking feature is the application of the same prudential requirements to all firms without any difference about their size and/or activities. This poses a dilemma, given the fact that, for the smallest firms, the costs associated with both the understanding and the operationalization of prudential requirements are too high and not matched by the public policy benefits that the Supervisor may have in mind.

Admittedly, some crucial aspects currently affecting the smaller credit institutions could be alleviated with a change in the prudential requirements, so that the current level of resilience could be achieved in a less convoluted way. According to this, simplified requirements would translate into lower costs, given the fact that prudential regulation would be understood, interpreted and put in place a more straightforward way. Ultimately, this will reflect the specific risk, which is lower by definition, that smaller firms usually face. However, it is also vital to be minded of a drawback of this prospective framework. In essence, this simplification process could result in adding "barriers to growth" – both economic and psychological – for smaller firms. Empirically, if the prudential regulation is less complex for smaller firms, should the latter contemplate becoming large firms, they should adjust prudential requirements, and this process could be time-consuming. Since the level of regulation grows in proportion to the growth of the firm, similarly the further costs of this potential change could constitute a deterrent for growth.

The first stage, in the view of the new Regulatory framework, is to define which firms could take advantage of the simpler regime. It is clear that internationally active banks are subject to Basel standards. Consequently, they cannot adhere to the simpler regime, which, inevitably, would be tainted with different standards. The crucial point is that the Basel Committee does not provide any definition of an "internationally active bank:" the national jurisdictions have discretion to determine which national banks are active across the national borders.[21] In the light of this, the UK, already outside the European Union, need not comply with any "diktat" coming from across the Channel, and the best interests of the country will be taken into account.

Therefore, it is in the interest of the PRA to develop its own criteria, to ensure that a definition of domestic firms is found. In this way, the fundamental point seems to be identifying which magnitude of cross-border activities this definition would entail. Thus, potential criteria for a domestic, *ergo* British, regulation in this area can be made up of two components: the scope of activities outside of the UK, and the kind of major constraints existing on those firms within the UK, their own country. Likewise, international activities could be interpreted from the perspective of the financial statements: the relevant background should be based on the financial statements figures, and where they are located in terms of assets or liabilities of the firm. Another criterion could be the "legal form:" based on this, information concerned with the jurisdictions where firms, or their groups, have banking subsidiaries or branches, shall be taken into account.[22]

The simpler prudential regime, under the aegis of the PRA, could be derived from the application of the following criteria:[23]

1. The difference between the simpler regime and the existing prudential framework.
2. The resilience of small firms to be maintained with a standardised approach in the light of the determination capital requirement.
3. The requirement of liquidity to be applied to small firms.
4. The disclosure criteria about the resilience of small firms

As the result of this first discussion paper,[24] the majority of the respondents were asked to say whether their firms would continue operating under the prudential regime for larger

[21] S. Hohl *et al.*, *The Basel Framework in 100 Jurisdictions: Implementation Status and Proportionality Practices*, Financial Stability Institute Insights on policy implementation, No.11/2018.
[22] A.P.C. Carvalho *et al.*, *Proportionality in Banking Regulation: a Cross-country Comparison*, Financial Stability Institute Insights on policy implementation No.1/2017.
[23] Bank of England, *supra* note 16.
[24] Bank of England, Prudential Regulation Authority, Discussion Paper FS1/21, Responsed to DP1/21 A strong and simple prudential framework for non-systemic banks and building societies, December 2021.

firms. Furthermore, the majority expressed a preference for the "streamlined" approach, i.e. the prudential requirements under the simpler regime.[25]

IV. THE IMPORTANCE OF THE UK REGULATION PROPOSAL

The proposal of Regulation on building societies, or in other words on small and medium banking firms, is of crucial importance for its value as a possible "leading case." The idea is that other countries, or other jurisdictions, could draw inspiration from the final document, should a proposal follow up on this and become definitive, in order to implement a reform process of their own national regulation.

In doing so, the European Union could implement its own pieces of legislation, differentiating it according to the size of firms and businesses. It must be highlighted, though, that this sort of import should not become "transplanted"[26] or "copied-and-pasted" regulation, rather a model to be followed with any amendments that may appear to be necessary.

With the UK leaving the European Union, the banking supervision in "London" has moved to a system where the supervisory model is hinged upon domestic Authorities under the direct control of the British Government. In other words, it is the Government that takes into account the difference stances coming from British businesses including British banks. Therefore, from this simplified political architecture, among other things, it is possible to infer that in the future there will be a more efficient interaction between law makers and regulation. Intriguingly, a further peculiarity of the common law system should not be neglected, the English one in particular, within the broader British legislation, where, notoriously, a constitution is historically missing. Although the statement may lead – theoretically - to absurd conclusions, nevertheless it is undeniable that the higher is the level of constitutional norms, the lower is the degree of a flexibility bestowed upon the regulator, first and foremost the banking and financial one.

By contrast, the European Union, a comparatively new "beast," albeit firmly shaped on civil law jurisdictions – where a fundamental Chart by definition is an entrenched "attire" of the legal "wardrobe" of a specific Member State –, seems to be fettered by more "principles," the infamous pillars that are now such familiar features of the EU nomenclature. However, while on the one hand "pillars" may provide better safeguards, on the other hand they may

[25] This, in fact, is hinged upon some starting points, among which the modification of some elements of regulation currently existing for smaller firms.

[26] P. Legrand, *Comparative Legal Studies and the Matter of Authenticity*, in 1(2) J. Comp. L. 365, 367 (2006); P. Legrand, *European Legal System are not Converging*, in 54(1) Int.& Comp. L. Q. 52, 55-56 (1996).

turn out to be, in keeping on with the metaphors, very heavy pieces of furniture, very difficult to change and move.

The paradoxical effect that could be sparked off would be that a country that left the European Union may become a model to follow in reforming the financial legislation regulation. At the same time – and in this respect this may be a silver lining –, it is possible to see a new potential trend of the comparative analysis of law within Europe. With a country such as the UK which has left the European Union, the comparative methodology may not only regain momentum, but also expand its traditional area, in such a way to include the regulation, particularly the banking regulation, rather than simply the law.

The reform of Continental cooperative banks becomes unavoidable, providing that they are considered as an essential element of the banking system. In this perspective, therefore, it becomes essential to fit them out with their own subjectivity in order to make them competitive in the European landscape. If on the one hand this need for reform is perceived, on the other hand a revaluation of the role of these credit institutions should take place whilst maintaining their own nature.[27]

The proposal made by the British supervisory Authority would have the merit of diversifying the applicable body of law according to the size of the company and in relation to the activity actually carried out internationally. In other words, there is a need for forging an *ad hoc* regulation addressed to building societies in order not only to implement, but also enhance the peculiarities of this kind of credit institutions.[28]

[27] M.C. Cardelli (ed.), *Nuove opportunità e sfide per le banche di credito cooperativo: la riforma del 2016* (Torino, Giappichelli, 2016).

[28] A. Miglionico, *Grande dimensione e regolamentazione del credito cooperativo nell'UE*, in *Riv. Trim. Dir. Econ.*, No. 4/2018, 488 ff.