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Systems, Instruments and Regulatory Policies of American and European Capitalism

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Abstract
The beginning of the 21st century, the phenomenon of globalization, the IT revolution and the financialization of the economy have also changed the terms of the comparison among capitalist countries. At global level, the rapid expansion of the financial sector was also encouraged by an increase in innovative financial products. Regulators and supervisors have not been able to adequately identify and address the growing risks in the financial system. The beginning of the financial crisis has brought to light such weaknesses. And it is from this negative experience that the major world authorities have intervened, trying to set up plans and regulations to protect the financial system and consumers. The analysis of the framework that comes with the financial crisis of 2007-2013 is thus a starting point for this work to understand the new features of world capitalism. American and European capitalist systems seem to diverge above all on the policies and instruments for regulating the financial system. The aim of the work is to show the differences between the US and European financial and banking regulation. The former is geared towards reviving deregulation and financial innovation while the latter is more geared towards redesigning a more accentuated regulatory model with a governance of the economy that always sees the presence of a mixed welfare and market system.

Keywords: Capitalism, Shadow Banking, Deregulation, Supervision

JEL: G28, N2, F4

1. Introduction

In the years leading up to the crisis, the financial system has considerably grown in terms of size and it has become increasingly interconnected through long-lasting and complex credit intermediation chains on a global scale, causing more systemic risks. The rapid expansion of financial sector at global level, has also been facilitated by an increase of innovative financial products, often highly complex, which allowed financial institutes to increase also off-budget activities. In a world radically changed, policy makers, regulatory and supervisory authorities from all over the world have not appropriately been able to identify and deal with the increasing risks in the financial system. Many activities eluded regulation and supervision. While transactions of the most financial institutions were significantly increasing across borders and markets became increasingly integrated at international level, regulatory and supervision frameworks largely remained concentrated at national level.

The beginning of the financial crisis has brought to light such weaknesses. And what started out as *sub-prime* crisis in the United States in 2007 has rapidly become a real financial crisis at global level. The financial crisis turned into economic when, because of the lack of trust among operators, financial markets froze up, the liquidity decreased, initially causing a stall and subsequently a real contraction of the credit intended for companies and families. Following this negative experience, global authorities intervened to put into effect plans and regulations to guarantee the financial system and consumers, to avoid the threat of a new crisis comparable to that occurred in 2007.

The analysis of the scenario determined by the financial crisis of 2007-2013 represents, therefore, a necessary starting point to understand the different answers to the crisis emphasizing differences and similarities of the control systems of the financial and banking capitalism. These tough times for European economy and the incomplete monetary union determined, indeed, a divergent evolution of the two capitalism models. This paper, in fact, aims to analyse and emphasize the differences between the American and European financial and banking system and their related trends. The first, once again, aims to re-launch *deregulation* processes and financial innovation while the second is more focused to rethink about a clearer model of regulation with a *governance* that provides a combined system of *welfare* and market.

2. The crisis of the financial capitalism of 2007 and emergency actions

There is a general agreement about the root causes and trigger events that caused the crisis of 2007. The changes occurred over the last few decades, have substantially contributed to the economic and financial crisis. The financialization of the economy and the subsequent strengthened of the role of international finance certainly constitute the main cause of the crisis. In fact, the financial markets represent an extreme case of how globalization has drastically reduced, or even abolished, the economic borders, although those political and administrative and related to regulations have strictly remained national. The supporters of financial liberalization have always declared that markets of more integrated capitals would have made national financial markets more stable through an increasing international competition. The facts, instead, have shown how economic integration, without the integration of the control and supervisory systems and the coordination of public policies, have pushed governments to adopt inefficient and inappropriate national policies.

The second main cause has been the increasing of the systemic risk, due to the deregulation. The last thirty years have been characterized by a serious financial deregulation, not only in the USA, but in many parts of the world. Since the early ’80, and for almost thirty years, financial systems of Western countries have experienced a constant innovation process. The traditional banking model, that is regulated by specific authorities and whose main activities essentially consist in customer deposits and granting credits, it is now upstaged by several changes of the modern finance. Modern finance is characterized, in fact, by extremely fast and powerful electronic means, international mobility of capitals, diversified and increasingly personalized financing instruments, growing risk exposure, trading focused on short-term profits, excessive use of leverage and, in the end, a less rigorous regulation on financial activities.

The processes of *deregulation*[1], have facilitated the constitution and development of a myriad of non-bank financial institutions(NBFI). Several of the innovative financing instruments have become widespread because these have been able to circumvent regulations, such as those relating to the insufficiency of banks’ capital; to create off-balanced sheet vehicles and to convert (see the market of *credit default swaps*) risky assets in apparently safe ones. The abolition of the *Glass-Steagal Act*[2] and the radical changes of the *Community Reinvestment Act* in the last decade of the former century, have pushed several financial institutions to undertake

[1] In the United States the process of deregulation was first carried out under the chairmanship of Carter, influenced by Kahn and then continued in greater detail by Reagan since 1980-81 (and at the same time by the first minister Margaret Thatcher in Great Britain), enough to talk about Regan deregulation and “reaganomics”.
[2] Measure introduced in 1933under the presidency of Roosevelt and later abolished in 1999.

riskier activities. Specifically, the first provision has let commercial banks to enter in the *investment banking*, while the second has created a system in which banks have been evaluated based on the numbers of loans offered to low-income, the so called *sub-prime* mortgages.

The new financing instruments, increasingly sophisticated, offer new chances to investors; the market started to open up also to non-professional of the sector through instruments tailored to the needs and risk appetite of each operator. Moreover, the improved risk management, the use of *leverage*, together with software systems increasingly intuitive and accessible to all, made the trading more attractive for small investors, stimulating professionals to behave in a more "shameless" manner. Furthermore, this more efficient distribution of the risk has reduced the cost of capital, allowing several people to obtain credit, with consequent positive and negative effects on mortgages and consumer credit. In the end, in recent decades, the IT revolution allowed to reduce transaction costs, creating a new form of "instantaneous" trading, that occurs entirely online and that allows to carry out dozen transactions in very short time, obtaining, moreover, detailed information available on any aspect related to the investment.

The intensification of the global financial crisis of 2008 and the subsequent contraction of the global economy, have caused an unprecedented reaction from authorities. Central banks around the world drastically reduced the official rates, in many cases close to zero, while governments adopted a fiscal policy to compensate for the reduction of private consume, trying to replace the reduction in consumption and private investments, with an increase in public expenditure. In addition to banks' recapitalization, other public interventions aiming to financial restructuring of banks came about, such as the purchase of high risk toxic assets, the exchange between bank activities and government securities and the offer of guarantees on bank debts. Public interventions are increased regarding depositors, to guarantee bank deposits. These interventions in USA and in Europe in autumn 2008 avoided the collapse of the system. With the contribution of risk capital and the consequent nationalization that involved both the great Anglo-American banks and the large European groups, more radical interventions have been carried out. Having regard to imbalances of financial structure, the nationalisation was the best-case scenario. The several public interventions have always qualified as temporary, without intervening on corporate and management decisions.

The establishment of a new regulatory framework and regulation of financial markets, able to prevent or reduce the effect of financial crisis, have been put into effect in 2010 through a several reform proposals inspired by cooperation and coordination of principles at international level. One of the main reaction to crisis has been the attempt to relaunch the international cooperation of economic policies. The effort was based on G20 which, in the summit of Pittsburgh, proclaimed itself as the « premier forum for international economic cooperation». Among the works of G20, perhaps the one that deserves more attention, is the financial re-regulation, defined as the main instrument to control the global economy since the start of the crisis. The re-regulation concerns numerous aspects, such as minimum capital ratios for banks, organization of derivatives markets, remuneration schemes of the work of financial intermediaries. Based on indications from the Pittsburgh and London summits, both in Europe and in the United States, measures have been approved to redesign the system of rules and controls on intermediaries and financial markets and to review the structure of supervisory authorities

3. Financial Regulation in the Unites States

The reform of financial and banking system pursued with determination, by Obama Administration and approved by the Parliament of the United States in 2010, has radically innovated the *Federal Reserve Act* of 1913 and this has represented the most ambitious and systematic attempt of regulation of financial markets. The *"Dodd-Frank Wall Street Reform and Consumer Protection Act"* (or Dodd-Frank Act, from the names of the presidents of the two financial commissions of Senate and Chamber) is a Federal Law of United States approved in July 2010 which provides a significant reform of financial regulation impacting on several aspects of the national financial services industry. The regulation has introduced radical changes in rules, controls, Supervisory Authorities because it seeks to act on critical issues revealed by the recent financial crisis. The protection of consumers and investors, the improvement of the transparency and accountability of the financial system, the regulation of systemically important financial institutions (avoiding moral hazard phenomena) are among the purposes of legislative intervention [3].

The legislation text is complex both in structure and in its implications, as shown by the several regulated aspects. The main provisions provided by Dodd-Frank Act can be summarized in the following five aspects:

- Macroprudential supervision;
- Micro prudential supervision;
- Reform of the financial regulation;
- Crisis management;
- Consumer protection.

Macro-prudential supervision

Macro-prudential or systemic supervision, unlike the micro prudential one, is focused on the stability of the individual bank intermediaries, and it has as a scope of application the entire financial industry and particularly the banking sector. It aims to consider risks for the financial stability developed because of the exposition of the financial institutions to common macroeconomic risk factors. The Dodd Frank has introduced a change in the regulation of systemically important financial institutions, indicating as a regulatory objective the mitigation of systemic risk and the maintenance of the stability of the financial system. The monitoring of systemic risks is a necessary activity to prevent another financial crisis and it requires a control on systemically important financial institutions and on risks of instability related to their activity. In the Title I ("*Financial Stability*") is provided the establishment of two agencies named *Financial Stability Oversight Council* and *Office of Financial Research*. The *Financial Stability Oversight Council* (FSOC) is responsible for identifying the risks for financial stability that can came about from banking and non-bank financial institutions, promoting market discipline avoiding government intervention in case of bankruptcy, responding to the emerging threats for the stability of the American financial system. Among the powers conferred to *Financial Stability Oversight Council*, there is the possibility to entrust the *Board of Governors of Federal Reserve*, to impose stricter prudential standards compared to the ordinary ones for banks and non-bank financial institutions (*section* 121) and regarding capital requirements, leverage limits, liquidity standards, commissioning plans (*resolution*) and risk concentration limits. The new regulations on systemic risk monitoring include also "*non-bank financial company*". One of the power conferred to the *Council* is to submit to the supervision of the *Board of Governors* the non-bank financial institutions if these are considered a threat to the stability of the system (*section* 113). In this way, even insurance companies or mutual funds, for instance, can be supervised by the *Board of Governors*. Regarding the macroprudential supervision, the *Office of Financial Research* (OFR), is then established, with the task of co-operating with the FSOC to find and analyse data. The OFR provides the administrative, technical and budget support to the *Council* and to the agencies represented by it improving the quality, transparency and accessibility to financial data.

The micro prudential supervision

Unlike the macro prudential supervision, the micro prudential one aims to guarantee a cautious banking management. It includes, instruments that preventively facilitate the stability of individual intermediaries, such as, the authorization to carry out banking activities, if restrictions on the minimum amount of risk capital and the reputability requirements of the promoters and management are satisfied; the restrictions to the range of activities that can be carried out by the bank or to the markets on which it can operate, and so on. In this sense the authority of *Federal Reserve* towards major financial corporation increased, confirming a change of direction that has led the major US *investment banks* to become commercial banks and pass under the direct responsibility of the Fed. Concerning the issue *too big to fail*, which refers to those banks and financial institutions considered up to now "too big and important for the system as a whole to leave them fail", the choice was to take as a model the *Federal Deposit Insurance Corporation* (FDIC), namely the Bank Deposit Guarantee Fund that directly manages bankruptcies of small local banks, often finding a buyer for their assets and counters and trying to minimize the risk of collapse of individual local entities. Hence the choice to allow *regulators* to impose

[3] The objective of Dodd Frank Act is indicated in the premise of the legislative text: "…*to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes*".

restrictions to large financial institutions in difficulty and if necessary, also manage a "regulated and controlled liquidation" to avoid the collapse of the system. In the insurance sector, in the end, *Financial Insurance Office* (FIO) has been established with the task to control insurance sector. Its action extends to all classes of insurance other than health insurance, long term care insurance, harvest insurance, and it is regulated by the *Federal Crop Insurance Act*. The FIO collaborates with FSOC.

The new financial regulation

The Dodd-Frank Act has significantly determined changes also in financing processes of financial institutions. Particularly, regarding the new derivatives regulations. The derivatives market has been, up to now, especially in the segment "*over the counter*", absolutely deregulated. In this regard**,** the Title VII ("*Wall Street Transparency and Accountability*") intends to implement the obligation, to make the derivatives market traded over the counter more secure and transparent, through the standardization of contracts, centralisation of trade and the double supervision of *Security Exchange Commission (*SEC) and *Commodity Futures Trading Commission* (CFTC). Traders operating in derivatives market shall be registered with SEC and CFTC and they might have capital requirements. Furthermore, the new regulation imposes to the financial groups which sell risky and complex financial products to bear part of the risk, such as in the case of derivatives guaranteed by property mortgage, although this could reduce their profit margin. Alongside this, *hedge funds* and *private equity* funds with headquarters in the United States shall be registered with the competent authorities. In practice on the derivative products, a federal market control is established for the first time as well as the obligation of a guarantee on products by a third party with the aim of favouring trades carried out increasingly on public financial markets rather than through private transactions. The *proprietary trading*[4] of banks, that is the trading of own funds, is regulated for the first time based on the former chairman of Fed Paul Volcker proposal. Banks will be able to make trading of equity to invest in *hedge funds* and *private equity* funds, but only at 3% of the tangible equity of the banks except for American government securities and obligations issued by entities that have federal guarantees. This aspect of the reform is based on the concept not to favour a high-risk *trading* for banks that has federal guarantee on deposits they manage, but also to avoid, as it often has happened lately, heavy losses related to risky financial investments. New regulations are provided for financial institutions involved in securitisation transactions. It is provided the obligation to withhold a portion of the credit risk of the assets sold in the transaction. Regarding the rating agencies the Dodd-Frank Act has increased the internal control, imposing a greater transparency about procedures and methods to calculate the rating, conferring the right to act against agencies and, in the end, strengthening the powers of the SEC. In the *corporate governance* and remuneration mechanisms sectors, the new regulations aim to strengthen the transparency and to rebalance the corporate governance model. The SEC has been authorized to adopt a mechanism that allows shareholders to propose their own candidates for the Board of Directors of the Company, for avoiding that the top management is the same one that can decide regarding their salaries and bonuses. Instead, regarding the remunerations, it has been introduced the "*say-on-pay*" that is, the approval by shareholders about the payments of the executive bodies of the company.

Crisis management

Title II created the *Orderly Liquidation Authority* (OLA), a provision to apply under the guidance of the *Federal Deposit Insurance Corporation*, the body responsible for deposit insurance and to intervene in case of institutes in difficulty which are considered important for the system. The intervention shall occur in the form of "*Single point of entry*" (Spe), in other words at the level of the parent company, the holding company, letting subsidiaries to continue to operate. The *Federal Deposit Insurance Corporation* shall replace the board and central management, and it may transfer assets and create a "bridging company", devalue the debt and equity, as well as tap into the special fund of Treasury (the *Orderly Liquidation Fund*), which is capitalized with a tax calculated on the risk of individual banks, to ensure necessary resources for the new institution, if there is no market financing. Any public funds shall be guaranteed by the activity of the financial institution. Basically, the

[4] The English term proprietary trading means trading activity carried out with commercial stocks, obligations, currencies, raw materials, derivatives and other financial instruments that the bank does for itself and not on behalf of its clients. The goal of the bank is to make a profit for itself.

American Authority acquired more powers than in the past to sort out possible crises. In respect of reorganization or liquidation, it can choose at its discretion the assets and liabilities to transfer, as well as deciding a different treatment of similar creditors. In the end, the Minister of the Treasury can activate, as part of the ordinary liquidation procedure, extraordinary authorizations to the Fed for the credit extension.

Consumer Protection

The Title X established a new authority to protect savers, the *Bureau of Consumer Financial Protection* (BCFP), that is an independent authority within *Federal Reserve*. It is part of the widest project of the reform of the American financial system to carry out *financial education* tasks and protect the consumer. The correct treatment of consumers is considered relevant for the long-term stability of the financial system. The BCFP, whose main tasks are to regulate products and financial services of the consumer, to ensure uniform standards, to provide detailed and reliable information to consumer about products and protect these from eluded additional costs, abuses and improper practices. The powers of supervision and control of the Bureau also refer to the possibility to request a report and to make periodical controls as well as the coordination with the other supervisory authorities (section 1024).

The summary of these key points of the reform of the American financial regulation emphasizes the importance regarding the carried-out changes about the financial intermediaries' activities, in the structure of the supervision authorities, in the system of protection of shareholders and of investor protection. The Dodd-Frank aimed to restart markets and guarantee the future sustainability. In this regard important results have been obtained: the emergence of the *Consumer Financial Protection Bureau*, standards for granting loans, that before crisis were very flexible, have been hardened; the minimum of capital that banks are obliged to maintain to amortise any unexpected losses, has been revised and new liquidation protocols have been established to be followed in the event of another Lehman Brothers collapse; moreover the derivatives market has been completely changed, as a consequence of the fact that the unappropriated use of it by the investment banks was the main cause of the crisis of 2008. On10 December 2013, in the end, the enactment of Dodd-Frank reached a milestone with the implementation of the so called "Volcker rule". However, Dodd Frank Act represents a first level regulation whereby its ability to guarantee the stability of financial system and prevent possible crises will depend on the contents of preliminary studies and the regulations applied by Authorities, albeit with some delays.

4. The reform of the European financial architecture

The crisis has highlighted, at European level, limits and weaknesses of European institutional framework for banking and financial supervision based on an organization of national competences and liabilities in view of financial and banking markets increasingly dynamic and integrated. Confronted to the numerous failures of regulation, supervision and management of the crisis, Europe had to necessary rethink, or even create from scratch, a regulation system able to prevent the recurrence of a systemic collapse. In this respect the group of experts coordinated and chaired by Jaques de Laroisière in their report published in March 2009 have clearly identified the causes which prevented to give common answers aimed at controlling imbalanced that produced the crisis. The Report showed the remarkable gap between the borders of financial markets, which have become European, and the controls that still are segmented on a national basis. Several European directives, even recently issued, have shown several gaps that allowed several member states to arbitrary decisions. The Report underlined:

- Lack of an appropriate macroprudential supervision and early warning systems. European supervision gave extreme importance to individual enterprises and too little to macroprudential supervision.
- Decentralized supervision and voluntary cooperation of national authority;
- Lack of a uniform appraisal systems and uniform prudential treatment of *cross-border* groups.

Based on the conclusions of the De Larosière Report, in September 2010, financial ministers of UE gave the green light for the financial supervision reform. Specifically, some bodies have been established:

- the *European Systemic Risk Board* (ESRB) headed by the governor of BCE with the task to supervise the risks originating from the macroeconomic developments and of the financial system as a whole to preserve the financial stability (macro –prudential supervision).
- the *European System of Financial Supervisors* (ESFS) including three new European supervisory authorities on the banking, insurance and securities markets as well as national supervisors. This new supervisory body therefore provides for the "networking" of national financial supervisory authorities which should cooperate with the European Supervisory Authorities to safeguard the solidity of individual financial firms and to protect users of financial services.

The new structure, based on the interaction of ESRB and ESFS, should help to guarantee a greater financial stability and above all it should show an aptitude to prevent future systemic risks. However, for explanatory purposes, in order to facilitate the comparison with the United States, the planned interventions will be summarized in five macro-areas:
- Macro-prudential supervision;
- Micro-prudential supervision;
- Financial Regulation Reform;
- Crisis management;
- Consumer Protection.

Macroprudential supervision
The gaps caused by the crisis were not only related to regulations. In some countries these gaps have been observed even in supervision activities carried out by authorities responsible for prudential supervision. It became clear, therefore, that during the period before the crisis, the supervisory methods were permissive and being used as a competition instruments in several European and international financial centres. Light-touch approaches to supervision (so called light-touch or hands-off), in fact, have incentivized the constitution or the operation of intermediaries in financial centres that had promoted them with beneficial results, at least in short term, for the occupation, economy and public finance of the interested countries. The macroeconomic supervision has greatly been improved, thus becoming more effective. The Regulations (UE) n. 1092/2010, put into effect on 16/12/2010, regarding the macroprudential supervision of the UE financial system established the *European Systemic Risk Board* (ESRB). ESRB has the task to control any phenomena that can produce systemic instability such as the credit growth, asset price dynamics both financial and real, interconnections between institutions and markets. In case of any relevant threat to the systemic stability, ESRB can issue some warnings (*risk warning*) and some proper recommendations addressed to the member states authorities. Only in case of exceptional circumstances, ESRB can take binding decisions. ESRB collaborates with EBA to implement macroprudential supervision. The collaboration between ESRB and EBA must be particularly intense in the monitoring and evaluation of systemic risk in the financial sector; to carry out stress tests to European financial institutions and definition of supervisory instruments that can be used in an anti-cyclical way to limit the accumulation of excessive risks during the cycle expansion phases.

Micro-prudential supervision
Regarding micro prudential supervision the new supervision authority *ESFS (European System of Financial Supervision*), active since 1° January 2011, has been conceived to create a system in line with a financial market, that became European and the only one for financial services, connecting national supervisory authorities in a strong community network.
ESFS includes three new European authorities (ESA, *European Supervisory Authorities*), represented by:
- EBA (*European Banking Authority*) for banking sector;
- ESMA (*European Securities and Markets Authority*) for securities sector;
- EIOPA (*European Insurance and Occupational Pension Authority*) for the insurance sector and pension funds.

The power conferred to the new authorities are referred to (i) draw up common rules(so called single rulebook) that can be directly applied in all member states; (ii) to undertake binding decisions to resolve disputes between national supervisory authorities and to solve cases where the European Regulation is not correctly applied (iii) to coordinate national authorities in situations of crisis and taking decisions regarding individual financial

institutions in the cases expressly indicated in the Regulation (for example, if national authorities are not in compliance with their decisions); (iv) in case of emergency, banning the use of some financial products.
National Supervision Authorities continue to carry out a domestic level supervision. This means that the indications are provided by ESAs, but national supervisors are responsible for the actual implementation. Given that, ESA boards will be the expression of the representatives of the member states, it is not possible to certainly declare that their working will be efficient and that the European interest will always prevail over national interests.

The reform of financial regulation
Four specific initiatives have been taken to fill the regulatory gaps noted during the crisis, that refer to:

a) Capital requirements

The new rules, definitively published in 2011, and put into force in 2013 aimed to balance a bank capital concept and to significantly redefine the prudential treatment of some risks took by banks, such as those related to exposures to securitisations and off-balance sheet vehicles. Moreover, the method of calculation of capital requirements in respect of market risks became stricter. It will be introduced a maximum level of leverage to allow banks to limit overall debt from 2018. Furthermore, some balanced rules regarding liquidity have been provided [5]. In the end, some articulated measures, complementary to one another, aiming to make capital requirements less unstable, over time, have been established.

b) Derivatives

In order to reduce the negative effects of interconnections among intermediaries limiting the risks of contagion, an increased standardization of derivatives markets *over-the-counter* has been requested. It has been required that all transactions must be registered in trade repositories[6]. Furthermore, the obligation to inform Supervision Authorities about all transactions details carried out in derivative financial instruments has been put into force in 2014. Article 9 of Regulation EMIR (UE n. 648/2012 of 4 July 2012) provides, in fact, that all financial transactions carried out on derivative products must be registered with trade repositories certified by the European Security and markets authority (ESMA).

c) Rating Agencies

With Regulation 1060/2009 a legislative framework for credit rating agencies activities has been created to protect investors and European financial markets from the risks of unethical practices. It establishes the conditions for issuing of credit rating as well as the regulation regarding the registration and supervision of credit rating agencies. The Regulation n. 462 of 2013 enacted new and stricter rules for rating agencies activities. The rules cannot certainly avoid any risk or issue in the European market, but the stricter *governance* regulation, ownership structures, sovereign ratings, conflicts of interest and civil liability, seem to be a first and solid step towards a greater transparency of financial markets.

d) Alternative Investment Fund Managers Directive

In the end, the directive 61/2011 aimed to fill a legislative gap in the field of alternative investment funds, such as *hedge funds*. The role of *hedge funds* has been, in fact, to initiate a devastating knock on effect. The retail chain created the fall in prices and an enormous instability of markets. Therefore, the directive has defined harmonized rules applicable to all Investment Fund Managers and it has provided rules of conduct, transparency of information and capital, organisational requirements as well as requirements of control of the risk like those provided for management company of harmonized mutual funds. Successively with a further Regulation n. 231/2013, other regulations regarding derogations, general operating conditions, depositaries, leverage, transparency and supervision have been taken.

Crisis management
Crisis management is entrusted to new and different instruments progressively established by European Union. It refers to EFSM (*European Financial Stabilization Mechanism*), EFSF (*European Financial Stability Facility*) and ESM (*European Stability Mechanism*). Specifically:

a. European Financial Stabilization Mechanism

[5] Basel Committee on Banking Supervision, International Framework for liquidity risk measurement, standards and monitoring- consultative document, December 2009.
[6] Financial Stability Board, *Report on Improving OTC Derivatives Markets*, October 2010.

The EFSM, established in May 2010, is the first credit package made available for member states of European Union that are in financial difficulties because of "exceptional and not controllable circumstances" by them and which provides resources up to 60 billion of Euros. The regulation provides that the loan terms (cost, maturity, pricing and number of instalments) are established by the European Commission, which is also responsible for verifying that appropriate policy measures have been established in the beneficiary country to bring the fiscal and financial situation within the limits of normality. The Regulation also provides that the use of these funds must be accompanied by loans from International Monetary Fund (IMF). The EFSM is internal of the European Union and it is guaranteed by its balance sheet of the Union.

b. *European Financial Stability Facility*

The EFSF is a company with its headquarters in Luxembourg founded by 16-member states of the eurozone on 7 June 2010. It is basically a bond issuing company. Raising capital, through the distribution on international financial markets of EFSF-bond, is only used to help eurozone countries in difficulty. The aid consists in the provision of a loan to the state that requires it to preserve the financial stability of the European Monetary Union. The full extent of EFSF was established in 2010 at 440 billion of euro but it has successively been extended up to 750 billion of euro. The guarantees are provided pro rata by member states, based on the contribution shares to the capital of European Central Bank. The EFSF financing has been granted in view of the conditions that the receiving country assumes relating to the management of its economic policy.

c. *European Stability Mechanism*

The ESM is a real permanent institution enabled to intervene to safeguard the financial stability of the Eurozone. It is regulated by international laws (such as FMI) and, starting from 2013, it is intended to replace the previous EFSM and EFSF to which it has been accompanied for one year since July 2012. Conversely to EFSF, the States will not give any guarantees to the new body on its bond issues, but these will be actual shareholders. ESM can get into debt by issuing securities to give financial support to states in difficulty, with the capital (initially of 700 billion). The securities issued by ESM will have, moreover, repayment priorities on domestic debt securities of the financed states: consequently, the securities of this new "state-rescue" fund will be less risky per se and this not because they are covered by third-party guarantee. For this reason, the ESM issues do not involve any parallel increase of public debts of the shareholding states.

Consumer protection

The directive of 2004 known as *Markets in Financial Instruments Directive* (MIFID) is one of the main regulatory innovations. The fundamental purposes of the directive are: the protection for investors that depends on the different degree of financial experience; the integrity of markets; the strengthening of competitive mechanisms through the abolition of the obligation to concentrate trades on regulated markets; markets efficiency, also reducing the cost of services offered and improving the *governance* systems of investment firms and a better managing of conflicts of interest. The directive, subsequently amended by a new provision of 2006, is not limited to providing some information requirements for intermediaries, but it must carry out some tests regarding the nature of the investment service offered or required by the client. With a view to stimulating competition and ensuring better conditions for investors, the Directive abolishes the obligation to concentrate trading on regulated markets and introduces new forms of exchange.

In view of possible places where financial instruments can be negotiated, the obligation of *best execution* is reaffirmed[7]. In the end, within each investment firm, a function, named *compliance*, which deals with the control of the fulfilment of the obligations of correctness and transparency, has been established.

5. Comparison between Policy instruments and Institutional Arrangements

After having carefully analysed the policies and regulations put into effect by European and American authorities to deal with the financial and economic crisis it is necessary to compare the two systems, putting in evidence their analogies and differences. The modifications carried out by the two systems are very similar, and this shows that there is a broad consensus to some points: (i) the capital of banks must be strengthened and made less pro-cyclical; (ii) it is necessary to weaken the role of rating agencies regarding the regulation; (iii) the

[7] *best execution* means that the intermediary must carry out the transaction on behalf of clients at the best possible taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

regulation regarding accounting policies must be diluted by the principle of *fair value*; (iv) the so called parallel banking system (*hedge* funds, *private equity* funds and so on) must be made more transparent and regulated; (v) OTC derivatives, as far as possible, mediated by *clearing house*; (vi) the remuneration of managers must be connected to long term results; (vii) more transparent procedures should be developed in terms of solving banking crises; (viii) The international cooperation must be strengthened, giving to international bodies such as Basel Committee on Banking Supervision, the *Financial Stability Board* and the International Monetary Fund, a crucial role. In both cases, then, the fragmentation of supervision authorities is considered as a weakness to correct. Obviously, in the European Case the fragmentation is due to the prevalent role played by supervision authorities of the member states, while in the States the issue came about from excessive numbers of organisms whose competences and range of action is often confused and overlapped. In the end, both reforms and changes over time proposed and implemented, give to Central banks a key role regarding supervision, considering the fundamental role that they played during the most acute phase of the crisis.

The table below offers a concise comparison of policy macro-areas of the two supervision and regulatory systems from which we can observe differences and similarities:

Table 1: Differences and similarities between the US and EU supervisory and regulatory systems

Macro-prudential supervision	A new supervision structure has been created by European and American Authorities: The *Financial Stability Oversight Council* in the United States and the *European Systemic Risk Board* in Europe. While the first includes the Central Bank, the Treasure and other main supervisory authorities, with the task to identify the risks resulting from banking and non-banking financial institutions, promoting market discipline and removing the expectation of a government intervention in case of bankruptcy with the possibility of making binding decisions, in Europe, instead, the ESRB only has tasks to monitor phenomena that are potentially capable of producing systemic instability, issuing only non-binding recommendations
Micro-prudential supervision	Micro-prudential supervision in United States is the responsibility of *Federal Reserve System*, that deals with the regulation and supervision of all SIFIs, the *Federal Deposit Insurance Corporation* of non SIFI banks and the *Federal Insurance Office* of insurance sector that takes binding decisions. In Europe the *European System of Financial Supervision* has been established and it is composed by three new authorities that must coordinate, address and shape homogenous supervision and binding rules inside the European Union but delegating their application domestic agencies.
Reform of financial regulation	The reform of the system has radically innovated the *Federal Reserve Act* of 1913. The Dodd-Frank Act has introduced radical changes in the regulations, controls and supervisory authorities. Among the regulations those referred to protection of the consumers and investors, the improvement of transparency and liability of financial system, regulation of systemically important institutions, regulation of the market “*over the counter*”, centralization of trade and double

	supervision by *Security Exchange Commission* and *Commodity Futures Trading Commission*, excluding, nevertheless, the non-speculative derivatives from the regulation. The Basle regulations represent, instead, the core of the European reform aiming at **:** 1) strengthening of capital-adequacy of credit institutions and the improvement of the capital quality; 2) the introduction of "leverage ratio", ie a maximum ratio between capital and assets also in the expansive phases of the economic cycle; 3) the adoption of measures to combat pro-cyclicality, providing for capital " buffers" in the expansionary phases and anti-cyclical provisions linked to the expected losses of an entire economic cycle; 4) the reduction of liquidity risk, through "buffers" of liquid assets able to cope expected cash outflows.
Crisis management	The main innovations introduced for the management of the crisis in the United States are related to the regulations regarding liquidation of the SIFIs and in order to manage them the *Orderly Liquidation Fund* (OLF), the *Orderly Liquidation Procedure* (OLP) and the *Orderly Liquidation Authority* (OLA) have been created. All institutes being headed by *Financial Stability Oversight Council*. On the contrary, to support Member States in difficulty, the EFSF, the EFSM and finally the ESM has been created by European Union.
Consumer protection	The *Bureau of Consumer Financial Protection* has been established to protect consumers with the main task of regulating financial products and services to the consumer, including the need to ensure uniform standards for all products, to provide consumers with detailed and reliable information and protect them from hidden additional costs, abusive terms and unfair practices. In Europe, instead, the directive 2004/39, known as MIFID, deals with the protection of investors, ensuring the efficiency and integrity of markets, strengthening competitive mechanisms and improving the *governance* systems of investment companies.

Nevertheless, beyond these relevant similarities, that denote an international convergence in the reforming processes of supervision systems, it is interesting to analyse the points on which the two systems diverge:

a. First of all, the different role assigned to the Central Bank. The *Federal Reserve* has the total responsibility regarding the supervision of all financial, banking and non-banking intermediaries that, due to scopes can put the stability of the financial system at risk. The ECB, instead, is assigned only the role to "host", coordinate and preside over the so called *European Systematic Risk Board* (Esrb). This is composed, as well as by the members of the General Council of the European System of Central Banks, by a representative of the European Commission and by the presidents of the three specially established authorities because of the reform: EBA, EIOPA, ESMA. However, the ESRB, supervises only the macro-prudential supervision that aims to the stability of the entire system, but not to the micro-prudential one on individual financial intermediaries. Moreover, it can only govern with the word, issuing recommendations and opinions aimed at limiting systemic risks. In the Unites States, also it is provided the establishment of a new supervisory body, the FSOC - *Financial Service Oversight Council*, which includes the central bank, the treasure the other main supervisory authorities. However, it is led by the Secretary of the Treasury and it coordinates the whole activity of both macro and micro-prudential supervision. In Europe, there is a lack of a strong political leadership capable of mobilizing financial resources in the event of a crisis, and therefore it has clearly not been possible to assign such role to any Community body;

b. The second significant difference between the European model and the US model concerns the establishment a body to protect consumers: the Americans, in line with their cultural and ideological tradition, have provided for the *Bureau of Consumer Financial Protection* which will monitor products and processes concerning credit, savings and payment systems. In Europe only Community directives were put into effect, leaving to the Member States the real consumer protection without establishing any supranational body capable of ensuring effective coordination and control;

c. In the end, although none of the two regulatory models managed to make a definitive consolidation of the hypertrophic supervisory structures, in Europe there was no more than a closer coordination of the existing authorities. In fact, the *European System of Financial Supervision*, that includes EBA, ESMA and EIOPA, jointly with their respective domestic supervisory authorities, is nothing but a network of decentralized but integrated structures, that aims to coordinate the micro-prudential supervision in Europe. The tasks of day to day supervision have been transferred to domestic bodies, that are closer to intermediaries, while the new authorities carry out a coordination role both prudential standards and their punctual implementation. In the Unites States, instead, the supervision can be referred to six authorities, and of course to Treasure and FED: the SEC(that has lost all control over investment banks, after the disastrous results achieved), the *National Bank Supervisor* (that supervises at federal level institutions that collect deposits in several States, in order to avoid regulatory arbitrage and on the American branches of foreign banks), the *Commodity Futures Trading Commission* (which deals with derivative products and which must better coordinate with the activities of the Sec), the *Federal Deposit Insurance Corporation* (which continues to insure bank deposits) and the *Federal Housing Finance Agency* (that supervises on institutions such as Fannie Mae and Freddie Mac).

In the light of these interventions, it is too early to make considerations regarding the efficiency of the new American and European regulatory framework. There is no doubt that the financial system is more stable nowadays than before crisis, but this does not mean that we are completely safe. There is still much work to be done. The real test on the efficacy of the law and the real will of Governments to enforce it, it will come subsequently, when the memory of recession will fade away, and the economy will recover completely only in that moment we will know if the new regulation will be truly efficient. Anyway, both systems still show points of weakness and the debate on the role to be assigned to Central Bank represents evidence of this. However, it seems that the American project is more coherent comparing to the political willingness to give to the entire financial and banking system, that leading role compromised by the crisis. The European Union remains involved in vetoes that impede a real leadership at continental level.

6. Future developments and conclusive considerations

The interpretation of the crisis, as basically an issue of non-adequately regulated financial markets and therefore a failure of the market, has characterized the debate of these last years and it suggested the reforms exanimated and carried out by both parts of Atlantic. The requests to tighten up banking regulations, to limit the scope of finance, to establish more strict supervision authorities have been the areas of intervention of political initiatives to deal with the consequences of the crisis and to prevent others.

At the base of this stabilization approach there was a common theme: *financial dominance* (Brunnermeier, 2016). The presence of a non-negligible financial sector requires a comprehensive and rigorous approach. The financial dominance regime is one where, due to a strategic weakness, the financial sector can impose recapitalization costs either on central banks or on national tax authorities. In good times, the financial sector earns a risk premium; in unfavourable times, it tries to avoid incurring losses. In order to safeguard the rest of the economy, therefore, either the central bank (through direct or expansive redistributive monetary policies of the interest rate) or national authorities through direct recapitalizations have to intervene.

In this regard, the strengthening of public supervision and the progressive re-regulation of the markets, observed both in the United States and in Europe, can be referred to a tendency to establish a public order of the financial markets (Meadel, 2007) and to restrict facts of financial dominance. At this stage, in fact, it has been registered an abandonment of the traditional intermediaries' self-regulation, in favour of the strengthening of public controls and of a strict regulation, in order to facilitate an efficient *enforcement* of the regulations. All this could lead to a progressive configuration of a global "financial" order with the task to impose to the market some imperative principles, such as the respect of the free competition, the respect to an equal treatment of the participants, the transparency and the protection of the saver.

The examinations of the carried out reforms and those in progress following the crises, regarding the financial markets that have been done in the recent years, have allowed us to highlight the increasingly important role that the supervisory body has taken on both in the United States and in the continent as well as a clear tendency of regulation to set up a public order in the financial markets, which can also be applied by the same intermediaries. Regarding the architecture of the supervisory structures above described, these have largely been influenced by the diversity of institutional settings and the structure of the reference markets. In the Unites States reforms are incremental and they follow a *learning by doing* process, following the crises occurred, being negatively affected by the uniformity of supervisory architecture as well as by the double level of federal-state government and the extreme fragmentation of the market because of its largeness; in Europe, in accordance with the well-known procedure Lamfalussy (Savino, 2005) as recently amended (COM(2007)727), instead it seems to give the priority to a previous elaboration of a theoretical model and subsequently to put it into effect in practice.

In the current situation, the globalization of supervisory rules, which should follow the existing globalization of markets, becomes even more necessary, to avoid competition between systems that could degenerate into a harmful downward race, when instead we should tend to ensure a *level playing field* to market operators. If it is true that currently the architecture of supervisory system on financial markets and the definition of the rules of the same supervision remain, on both sides of the Atlantic, a field reserved respectively to the US legislator and those of the Community and of the individual member countries of the European Union, without any global unitary regime currently being able to be set up in the sector, nevertheless reveals some signs which indicate that a certain degree of coordination between the different systems can take place on the basis of the needs of the market operators themselves, of territorial political institutions, if only for the purpose of not losing competitiveness in their financial centres.

In this regard it is emblematic the issue of the recognition of the validity of the European accounting policies from United States authorities, to draft financial statements of the companies. However, these arrangements are quite rare and it certainly is not yet in sight the moment where through mutual recognition procedure, increasing the need of common *standards* established by multilateral bodies, can be mixed the rights of united states financial markets with the ones of the continental Europe. To the current *top-down* approach aimed at achieving the objective of financial stability by the several international institutions operating in the sector (the International Monetary Fund, the World Bank, the Bank for International Settlements, the Basel Committee, the *Financial Stability Forum*), through controls exercised by these global bodies, should be accompanied, in this direction, by a concerted action and an harmonization of the supervisory and regulatory standards (Napolitano, 2008). In fact, it still lacking a global regulatory system of financial markets able to adequately prevent new and probable financial and banking crises. Recently, the statements of both the new President of the United States Trump and the new Governor of the Fed Powell even suggest a reversal of the trend, a return to deregulation and a revision of the Volker Rule, with a more condescending policy towards big finance and to American banks.

Despite recent events, in a medium to long-term vision, the world we live in, has radically changed. There has been a real revolution, because of an impressive technological progress, increasingly less protectionist trade policies, drastically reduced transport costs, large migratory flows, increasingly integrated markets for goods and services with the consequent strengthening of the role of international finance. These last ones represent an extreme case of how the globalization has drastically reduced, if not even cancelled, the economic boundaries, while the political ones and those related to the regulation have remained mainly national. The recent financial and economic crisis has therefore led to think about on the rules and methods of public intervention in the economy, on the instruments of regulation of finance and on its role, promoting a new attention for the international cooperation, and all this is the objective of this work.

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