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Under Pressure

Financial Supervision in the Post-2008 European Union

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This chapter is about financial supervision and reform at the level of the EU (European Union). The first thing to say is that financial supervision and reform at an international level are relatively new, reflecting the world of globalized and liberalized capital flows that we live in today. There are many labels for such a world, and 'neoliberal' is surely one of them.

Since the mid-1970s, finance has evolved in a transnational environment characterized by floating exchange rates and fiat-money regimes sustained by debt relations, while former distinctions among banking, securities and insurance are dissolving. This environment appears to be inherently unstable, as testified by a long series of crashes and bankruptcies, culminating in the 2008 global financial meltdown. Control over international finance has thus progressively become a matter of concern, though one that is mostly addressed through a variety of soft-law instruments – regulatory guidelines rather than requirements – that coexist with dissimilar national policies and what is known as regulatory arbitrage (Riles 2014). Some argue that, in such circumstances, effective financial control is impossible to achieve, the best alternative being the sort of surveillance expressed by the idea of financial supervision. Consequently, 'post-mortems of each and every financial crisis point (rightly or wrongly) at supervisory failures and the cry for changes resonates loudly' (Masciandaro and Quintyn 2013: 4).

As noted in the Introduction to this volume, one of the particularities of neoliberalism is a preoccupation with issues of right and wrong in the economy. Among other things, this means acknowledging the past failures in financial regulation and supervision that led to those crises, and seeking to perfect financial norms and regulations. In tune with this, I shall consider some organizational and regulatory implications of the 2008 financial collapse, symbolized by the bankruptcy of the investment bank Lehman Brothers. As will become clear, official reaction to the crisis amounted to creating more supervisory institutions and issuing more regulatory norms, an effort to find a technical solution to a global problem with significant socio-political dimensions. Put differently, that reaction reaffirmed the general understanding of economic wrong-doing as the violation of clear rules, an understanding that slights the socio-techno-political factors that lead economic actors to indulge in potentially wrongful practices, as well as underestimating the complexities associated with applying regulatory norms (as testified by a series of would-be prosecutions of global banks mentioned in this volume's Introduction).

By focusing on institutional and regulatory transformations since 2008, and primarily in the EU, this chapter intends to expand this analysis and consider a few additional aspects of contemporary financial governance. For instance, regulatory norms, whether clear or unclear, usually imply a scope of application, normally a national jurisdiction and a particular market segment. In other words, those norms operate in terms of boundaries, while a significant part of what passes for financial innovation sets out to explore the differences among the jurisdictions and segments that those boundaries imply or the interstices between them. Thus, financial innovation usually involves either hopping from one normative framework to another or entering a sort of regulatory no man's land. The notion of regulatory arbitrage, alluded to above, points precisely to the open and often legitimate exploration of regulatory loopholes and discrepancies for business purposes. Thus, financial actors became accustomed to using foreign offshore accounts and special-purpose vehicles to perform operations that would be highly taxed or even prohibited in their own countries, or to offering their clients products that look like savings deposits subject to retail banking regulation but that contain elements drawn from securities markets.

Much of what passes for legitimate financial innovation today, however, is likely to be labelled financial misdemeanour in the near future. This is so because of an essential characteristic of the neoliberal approach to dubious economic activity, the necessary presence of a lag between the moment when certain practices are seen as business as usual and the moment when they are condemned as wrong or criminal. If a normative framework exists, the transmutation of financial innovation into wrong-doing may involve the perception of norm violation. However, given the proclivity to regulatory arbitrage, a substantial part of financial activity remains poorly regulated or totally unregulated, as was the case of over-the-counter and derivatives markets before 2008 and of high-frequency algorithmic trading before 2014. It is no wonder, then, that regulators and others concerned with finance appear sceptical about regulatory clarity or efficacy, while at the same time continuing to make more rules. One goal of this chapter is to try to make sense of this apparent contradiction.

The chapter is based on the analysis of events related to recent organizational and regulatory steps taken by EU authorities with the aim of supervising financial activity and restricting financial wrong-doing. It is difficult to get access to financial regulators and do field work among them. Thus, I have relied on documentation available from institutional websites, occasional interviews with people and attendance at events. As well, I joined a summer course on financial regulation and supervision presented by one of my main informants in this project, a Portuguese securities regulator with extensive experience of EU forums and working groups. All this enabled me to get a clearer picture of the contemporary supervisory worldview, its intricacies and dilemmas.

The next section of this chapter considers some of the political effects of the 2008 crisis that may distinguish it from previous financial crises. The following section integrates some of the post-2008 institutional transformations into a longer chain of historical events, drawing on the concept of continuous change (Arrighi 1994). This genealogical sketch of financial supervision will be complemented by a more relational approach to be developed in the subsequent three sections. Each of these sections is devoted to a particular movement involving the combination of potentially tense elements: the cat-and-mouse game between innovation and wrong-doing, the interplay between national sovereignty and international harmonization, the predominance of technical facticity over fictionality. Taken together, these provide a socio-political framework that may help us to understand the prevalence of both dubious financial innovation and its partial remedies in contemporary neoliberal contexts; or, why regulators keep issuing more rules while being sceptical about the efficacy of those rules. The final section summarizes the main argument and the impasses presently being experienced by European financial supervisors.

The 2008 Crisis and its Effects

Following the announcement of Lehman Brothers' bankruptcy, the Wall Street crash of 15 September 2008 was presented as a critical event destined for the history books. Comparisons with the stock market crash of 1929 and the ensuing New Deal became commonplace, as were recommendations regarding changes that should be implemented in the near future. The necessity of substantial financial reform was reinforced by several bank bailouts funded with public money. And, to be fair, the efforts made to amend things have no parallel with any financial collapse since 1929.

The scope of reform is perhaps the first peculiarity of the 2008 crisis that deserves attention. Internationally, a new oversight body, the Financial Stability Board, was set up with the support of the G20, and the Basel III Accord was drafted by the Basel Committee on Banking Supervision. In the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 created new federal supervisory organizations, tightened the leverage and capital requirements for banks, restricted the exploration of legal interstices for financial-innovation purposes and paved the way for rescuing bankrupt institutions without recourse to public money (Morris and Price 2011). Though legally limited to the country where the global financial meltdown originated, the Act soon became a mandatory reference for regulators of other countries and for international organizations.

On the other side of the Atlantic, the EU set up new mechanisms of financial stability, while directives and regulations focusing on financial markets, banks, ratings agencies and venture capital were revised (European Commission 2012). Most notable was the emergence of a new complex of supervisory authorities, the European System of Financial Supervision, intended to monitor national authorities, control systemic risks and technically assess the deliberations of the European Commission, the Council and the European Parliament. This System comprises one macro-prudential authority, the European Systemic Risk Board, and three micro-prudential authorities: the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority.

All these efforts at financial reform testify to the impression that economic wrongdoing becomes apparent mostly in retrospect, in the light of new facts that cast doubt on practices that formerly were acceptable: what once was seen as ingenious financial innovation (e.g. piling up securitized debt) and strategic arbitrage (e.g. creating special-purpose vehicles to transfer credit risk) could later be frowned upon or even banned. Yet the 2008 stock crash was only a part, in fact a relatively benign one, of a chain of turbulent financial events with growing normative, institutional and societal impacts. Concern over investor loss due to abrupt asset devaluation was quickly superseded by the notion that both state policies and market practices were strongly conditioned by liquidity problems stemming from creditor–debtor relations (Graeber 2011; Riles 2013). The crisis, therefore, continued, with doubts regarding the effectiveness of ongoing financial reforms being openly voiced not only by specialized journalists and academics (Westbrook 2009; Nesvetailova 2010; Esposito 2011; Graeber 2011) but also by major figures of the world financial system. These included the director of the International Monetary Fund, Dominique Strauss-Kahn, who displayed his scepticism at a press conference in October 2010 (International Monetary Fund 2010).

By that time, the Euro crisis had emerged, with several highly indebted countries within the single-currency area (Greece, Ireland, Portugal, Cyprus and Spain) reluctantly accepting aid from a troika made up of the International Monetary Fund, the European Commission and the European Central Bank. As well, international money markets never recovered their old levels of activity, and they were further hampered by the Libor manipulation scandal in 2012, which strengthened the impression that little had changed in the sector since 2008 (Admati and Hellwig 2013; Lanchester 2013a, 2013b). In his last speech as Governor of the Bank of England, Mervyn King (2013: 6; see also Lanchester 2013b) assumed that both the size and the complexity of trans-sector financial conglomerates had become so serious a problem for governments and regulators that solving it would require the work of a whole generation. In other words, financial reform would become a permanent feature of a world dominated by hypertrophied banks. The absence of what Donato Masciandaro and Marc Quintyn (2013: 4) called a clear post-mortem could thus be considered a second hallmark of the 2008 crisis.

Indeed, in Europe, a banking union has recently been established alongside the new European System of Financial Supervision. In order to reduce the chance of further systemic crisis, the European Central Bank has assumed direct supervisory powers over relevant banks that formerly were held by national authorities. At the same time, and following the Libor affair, new regulatory principles for index production were discussed by several authorities worldwide, while studies were conducted on the new financial frontiers represented by shadow banking and high-frequency trading, about which regulators seemed to know very little.

The long duration of the crisis, together with the fact that its consequences spread beyond the realm of banks, stock exchanges and insurance companies to affect larger sectors of the economy and society, also seems to have encouraged the emergence of new political movements that were primarily concerned with financial issues. It would thus be possible to see politicization and moralization as a third, and last, peculiarity of the 2008 crisis.

Changes and Continuities

It is still too soon to tell whether the considerable scope of reform, the permanent state of crisis and the growing politicization of finance described in the preceding section will lead to substantial change (for a sceptical view, see Roitman 2014). One thing is certain, though: much of what has been done since 2008 is in line with the way finance has been perceived and handled over the last four decades (Dymski and Kaltenbrunner 2017).

In this regard, it may be useful to recall the distinction between continuous and discontinuous change that Giovanni Arrighi (1994) used with regard to capitalist cycles of accumulation. Arrighi employs the concept of continuous change to characterize the expansionist periods of capitalist empires, when investment flows to the production of commodities along a single path of development. Discontinuous change, on the other hand, would occur when the world economy shifts to a new developmental path. According to Arrighi, such shifts are characterized by the growing importance of finance, as the productive sectors that remained aligned with the declining economic paradigm produce lower and less attractive returns. He says that this has been occurring since the 1980s, with the decline of US hegemony. Arrighi does not say much about the evolution of finance in these periods, but rather adopts a conventional Marxian stance that focuses on material production rather than what is seen as fictitious capital. I think, however, that the idea of continuous change may be useful to approach financial reforms under neoliberalism, and possibly to characterize any period of financial expansion within Arrighi's scheme as well.

To talk of continuous change in finance means to talk of evolutions and innovations within an established framework of power, without any precipitous jump into a novel situation. Such a jump is likely to occur eventually, though most probably only after all other options have been discarded. In order to illustrate this, let us take a closer look at some of the organizational reconfigurations since 2008.

As mentioned above, one of the consequences of the financial collapse was a new set of supervisory institutions at the level of the EU, the European System of Financial Supervision. I said that it has three micro-prudential organs acting in cooperation with national supervisors alongside one macro-prudential entity. This System began to function in 2011. However, due to the Eurozone sovereign debt crisis in 2012, banking union was proposed, in order to disconnect state and bank indebtedness, which were linked because bank failures were being alleviated with public debt. Accordingly, in November 2014 the European Central Bank took on the direct micro-prudential supervision of 120 banking groups. The fact that an existing institution, the European Central Bank, had to be equipped with direct supervisory powers nicely exemplifies a process of continuous change, in which innovations keep in line with previous political decisions and extant organizational frameworks. There was, in truth, no proper alternative, as the European Central Bank was the only institution that the European treaties contemplated as a possible transnational banking supervisor (for a comprehensive discussion of this process, see Fontan 2017).

A closer look at the European System of Financial Supervision shows that this institutional cluster also has clear antecedents in the supervisory committees devised by the Lamfalussy Process in 2001, which aimed to stimulate convergence among the national structures of financial regulation and supervision then existing in the EU (OJEU 2009).[1] The Lamfalussy Process reproduced a widespread supervisory model that separates banks, securities firms and insurance companies. That model developed in the nineteenth century, when the three market segments were independently regulated, offered distinct products through their own channels and were managed according to their own accounting, business and risk concepts (see Herring and Carmassi 2007). Such sectorial supervision models began to be made irrelevant by the emergence of the first trans-sector financial conglomerates in the 1960s, not to mention the market developments that followed the progressive liberalization and internationalization of finance that began in the 1970s. It is not surprising, then, that by the time of the establishment of the new European System of Financial

Supervision in 2011, a number of European countries had already replaced the sector model with different cross-sector arrangements. The group involved in the creation of the System nevertheless considered that it could be risky to implement a different model when under such pressure to react to potentially systemic events.

I shall return to the genealogy of international supervisory institutions and other financial reforms. However, first I want to provide the analytical coordinates that constitute the spine of my argument, though it is probably more useful for raising questions than it is for answering them. The co-ordinates consist of a sequence of pairs identifying previous points of negotiated compromise that may be turning into points of tension and disruption: innovation and deviance, national and international, facticity and fictionality.

Innovation and Wrongdoing: A Cat-and-Mouse Game

As already noted, the line separating financial innovation from financial wrongdoing is thin. In certain cases, crossing it involves the perception of a distance between (normative) words and (normal) practice.

Consider false reporting and data manipulation, which have been central to a number of recent financial scandals. Official rules and other regulatory documents unanimously recommend the adoption of mechanisms such as the 'four-eye principle' (the checking of automated computation processes by at least two different people or parties), 'Chinese walls' (the rigorous separation within the organization of, say, traders and accountants) and 'whistle-blowing mechanisms' (anonymous denunciation procedures). However, many supervisors acknowledge that such mechanisms are ideals that tend to be ignored whenever stronger motivations arise. Concerning Chinese walls, in 2014 a Portuguese securities-supervision officer who also coordinates a group at the new European Securities and Markets Authority told me:

> The simplest definition of the economy tells you that it is about incentives. All else is rhetoric. And incentives, for these people [in the financial sector], are about earning money. If they believe that Chinese walls are interrupting the flux conducive to profit, you may be certain that any Chinese wall will disappear immediately!

The same distance between words and practices also surfaces in the official discourse of central bankers, whose role now seems to be little more than obsessive reaffirmation of the solidity and stability of the banking sector until its fragilities can no longer be hidden, and they become evident to everyone. All this introduces a strong note of scepticism that, I think, constitutes a hallmark of post-2008 supervisory feelings deserving further elaboration (see below).

However, in many cases, financial innovation also evolves in a sort of regulatory no man's land, using new technologies and theoretical models to mix up boundaries instituted by previous regulation or simply to enter new, uncharted territories. The waning of sectorial models of supervision described in the previous section is precisely a consequence of a series of innovations and arbitrage procedures that explored regulatory vacuums and loopholes, rendering former distinctions between banking, insurance and capital markets increasingly fuzzy and even leading to disputes among supervisory authorities regarding who should supervise what. Regulators were thus forced to come up with new norms and, in countries such as the United Kingdom and the Netherlands, to reorganize the whole supervisory system around a different model.

Financial authorities usually distinguish between illegal practices involving some sort of lying (such as ignoring Chinese walls, cooking the books, etc.) and legal arbitrage practices in which the parties try to follow legislation while also taking advantage of the differences between regulatory regimes. This is a pragmatic distinction, with the decision that something is illegal being based on the interpretation of applicable law. Regulatory arbitrage, on the other hand, is more open-ended. It can be acceptable and legal, but it may lead to practices that later would be made illegal. This is not to say that all regulatory arbitrage inevitably leads to crime: financial regulators deny this as a gross over-simplification of a complex matter. However, once it is accepted as normal practice, arbitrage introduces a peculiar dynamic akin to that of a musical fugue. Under such circumstances, supervisors are condemned to follow, at a distance and with a considerable delay, the activity of financial parties while also assisting governments in the production of the legal documents that either authorize or criminalize that same activity.

In this respect, an interesting discussion emerged during a summer course, in 2014, on the regulation and supervision of financial markets that was run by a Portuguese securities regulator who also collaborated with both the European Securities and Markets Authority and the European Systemic Risk Board. This official acknowledged that financiers would always come up with something that regulators had not thought of, which meant that norms would have to be constantly revised and new regulatory layers added to the old ones. 'Codes usually tend to come after the problems have arisen', he said, adding that 'companies will find a way to circumvent – and that is why new codes and new versions of older codes are always emerging'. At this point, a young Dutch participant suggested that all this seemed like a game. The officer concurred, with a smile: 'You're right, and players are trying to play the game to their advantage'.

The metaphor of the cat-and-mouse game (Riles 2014; Thiemann and Lepoutre 2017) may, therefore, be appropriate, with regulators persistently trying to catch up with the market. Another appealing metaphor would be that of an arms race, with the regulators and supervisors striving to keep up with the conceptual and technological advances deployed by market actors. The state of high-frequency trading illustrates this idea of a game or race. In that summer school, it was presented as a recent activity which was being studied by the European Securities and Markets Authority, based on data from twelve European trading venues relative to May 2013. Although the report was about to be published (see ESMA 2014), our instructor admitted that high-frequency trading would have changed by the time it appeared, which meant that more information would need to be collected.

The nature of the cat-and-mouse game reflects two complementary aspects of neoliberal policies. The first is the deregulation that enabled the free circulation of capital and the creation of genuinely global financial markets from the 1970s onwards. The second is the fact that, although financial markets have become global, supervision and regulation remain largely confined to national borders, though some degree of harmonization has already been achieved. This leads us to the second of my three pairs of coordinates.

The National and the International: A Delicate Compromise

Globalization of finance is commonly viewed as an achievement of neoliberalism. This is true, but we need to ask what it means to say that finance has (once more) become global. The answer lies, I think, in the ability to trade in any type of financial market from virtually anywhere in the world. Suppose that Maria, with a bank account in Brazil, wants to buy a stock that is traded on the London Stock Exchange. Maria tells her bank manager, who will forward the request to, say, the bank's international department. They, in turn, will communicate, either directly or through an intermediary bank, with a British bank that has direct access to the London Stock Exchange, and that bank will lodge the buy order on the exchange. Suppose further that the order is matched with a corresponding sell order coming from Toshiro in Japan and entering the London Stock Exchange through a similar chain of banks. The result is that Maria in Brazil is indirectly connected with Toshiro in Japan. Moreover, such a connection is possible between any two people anywhere, providing that each has an account at a bank that can deal with other banks and thus, ultimately, with stock exchanges. The globalization of finance lies in the possibility of such connections virtually everywhere, mainly through the intermediation of banks.

Those connections operate at the global level, but using them depends on the national level, in this case sets of national financial regulations. Consider reporting requirements, which are crucial for carrying out financial transactions, including buying and selling stocks. In some countries, reporting forms only allow the identification, as counter-parties, of the two banks that deal directly with the stock exchange, as if Maria and Toshiro never existed. In other countries the forms require that the whole sequence of intermediaries be disclosed. Such different national regulatory specifications thus are resources that financial actors and their lawyers explore and exploit for business purposes. As a consequence, regulatory arbitrage goes international, with off-shore and other tax havens appearing as sovereign intermediate points where information can be concealed from financial supervisors and state authorities. This said, global finance could never occur on the basis of national regulatory specifications alone: some standardization is required. Moreover, and as seen in the previous section, a good part of arbitrage procedures is likely to come to be seen as financial wrongdoing, which encourages coordination among different national authorities. All this leads to what could be called a delicate compromise between national sovereignty and international harmonization, also a hallmark of finance under neoliberalism.

The establishment in 1974 of the Basel Committee on Banking Supervision, an influential forum of central bankers hosted by the Bank for International Settlements, may be seen as a step towards a transnational discussion of financial stability issues raised by the dollar and oil crises of the early 1970s. There, a new language of standards, guidelines and codes of conduct, now commonly known as 'soft law' because of its voluntary character, began to be designed with the aim of harmonizing financial operations in the new world of floating exchange rates and fiat money regimes (Borio and Toniolo 2006: 2; Cooper 2006). Central bank policies and practices became more technical and detached from political measures, while these, in turn, became more subject to the influence of specific corporate interests. Gradually, financial supervision became an autonomous area, no longer dependent on the fiscal or monetary policies of states (Masciandaro and Quintyn 2013: 3). This was associated with the creation of a growing number of international organizations. The Bank for International Settlements supported the creation of the Financial Stability Forum in 1999, a council that was composed of the finance ministers and central bank governors of the G7 countries and that preceded the aforementioned Financial Stability Board, founded in 2009. The emergence of the European System of Financial Supervision also finds its proper place within this genealogy of post-Bretton Woods deliberative processes originally hosted by an international network of colleges, summits and roundtables that became progressively surrounded by a more stable set of institutions favouring regulatory convergence.

The growing autonomy of financial supervisors does not mean, of course, that their relationship with political actors ceased. Rather, it was reconfigured along new lines, flexibly combining both the public and the private, the national and the international (see Wedel 2009). Meetings between leading bankers and leading politicians started to occur within the exclusive circles of that international institutional network, with some prominent figures assuming different roles across the deliberative complex. Such is the case with Baron Alexandre Lamfalussy, an academic, a private banker and a central banker. He served at the Bank for International Settlements between 1976 and 1993, which he left to found the European Monetary Institute (forerunner of the European Central Bank), and later was involved in the 2001 regulatory convergence process that came to bear his name. Another such figure is Jacques de Larosière, a French civil servant and administrator sometimes depicted as an *ancien régime* character. In 2009 and 2010 he coordinated a high-level group set up by the European Commission and charged with designing the new European System of Financial Supervision, which was established shortly thereafter.

Deliberation, informed discussion with a view to reaching a compromise, has been the dominant practice within this international framework of financial institutions, and a necessary complement to their proclaimed independence from national governments. However, that independence is tempered by the fact that firms and whole economic sectors have an interest in the outcome of those deliberations, an interest commonly represented by the authorities of the countries where those firms and sectors are based. Since 2008 this translated into different regulatory responses by different countries in the EU regarding issues such as short-selling, shadow banking, credit default swaps and offshore banking. It is no coincidence that the three new European micro-prudential authorities were set up in London, Paris and Frankfurt, cities that were the three most conspicuous financial rivals within the EU. Likewise, it is no coincidence that, to avoid the appearance of factionalism or favouritism, none of the new supervisory authorities was headed by an English, French or German director. This sort of political compromise has been part of the European project since its creation, but the coordination difficulties experienced by the new European supervisory authorities leave international regulators with the sense that the development of a single financial market is much slower than that of the single market for goods and services.

Facticity and Fictionality: End of Predominance

This section turns to the relationship of finance in the neoliberal era with technicality or facticity (see MacKenzie 2009). Facticity has become the common language of international finance and the basis for many of those soft-law instruments that make up what is now known as regulation and supervision, contributing to their supposed clarity and impartiality. For the same reason, it has played an important role in the globalization of finance. It is possible, then, to see the dissemination of numerical facts as just another effect of the post-Bretton Woods institutional evolutions described above. In truth, however, quantification has a genealogy longer than that of neoliberalism (see Hacking 1990; Foucault [1978] 1991; Desrosières 1993; Porter 1995; Rose 1999; Hoskin and Macve 2000; Hoskin 2004), which means that the rise of neoliberalism can be seen as a consequence of the expansion of specific management techniques throughout the nineteenth and twentieth centuries. Furthermore, facticity brings forth its own, specific tensions, such as those between experts and ordinary people, and between facts and fictions. For these reasons, it is useful to give facticity its proper place in this analysis.

First and foremost, financial facticity is a source of trust, a vital asset for banks under fiat money regimes and fractional reserve systems. The very existence of banks and supervisory authorities thus requires economic and accounting indicators that represent market conditions and that have the status of facts, of things that can safely be taken for granted and used as the basis for further activity (see MacKenzie 2009). Of course, trust in those numbers is, ultimately, a social fact that relies on things such as timely reporting, institutional reputation, articulation protocols and specific governance mechanisms. In practice, facticity is produced by the extensive circulation of Excel spreadsheets and other templates through electronic networks according to regular rhythms of reporting, contributing to the organization of work and to the performance of intra- and inter-institutional articulations and hierarchies. This kind of reporting is the bulk of the work carried out inside financial organizations, with timely provision of quantitative assessments being frequently associated with the display of signs of transparency and good governance.

When searching for the effects of the 2008 events in the domain of facticity, it is, again, easy to find continuities with the past in conceptual and methodological frames, in established information channels, even in organizational design. At the same time, it is also possible to see a growing number of obstacles along the road of financial facts. Even if one admits that maintaining the facticity of finance has always been a delicate endeavour and that the apparent objectivity of numbers quickly vanishes at the level of situated practice (see Lopes 2011, 2015), it has become even more delicate since 2008. This can be demonstrated with two examples: one is the operationalization of the notion of systemic risk through the implementation of a new instrument, the banking stress test; the other is financial benchmarks, especially credit ratings and reference rates such as Libor and Euribor.

One of the main lessons of the 2008 financial collapse is that we live in a world dominated by a handful of megabanks with the potential to cause systemic risks on a global scale. Unlike the classic run on a single bank, systemic banking crises spread, by definition, to other institutions and they may affect not only liquidity but also currency and sovereign debt. Luc Laeven and Fabian Valencia (2008: 5) situate the beginning of such crises in 1970, and identify 124 similar events between 1970 and 2007, a period that nicely matches the historical frame of the present volume. Well before 2008, then, academics and financial regulators were aware of systemic risk (see Crockett 2000; Borio 2003; Herring and Carmassi 2007), as well as the type of supervision it required, what is now known as a macro-prudential approach, a strategy originally tested by the Bank of International

Settlements in the 1980s (Maes 2009). After 2008, the idea of systemic risk was further reinforced and operationalized through the creation of supervisory bodies intended to monitor it at the national and European levels (de Larosière 2013), a process that was still underway in 2017 as setting up the institutions and procedures needed for adequate monitoring had proved to be more difficult than expected.

The key instrument that financial supervisors use to manage systemic risk turned out to be the bank stress test, designed to assess the resilience of bank balance sheets in the face of unlikely but serious adverse events, like a major economic collapse or a natural catastrophe. Adopting stress tests has led, however, to ambiguous outcomes (see Langley 2013). While the tests apparently raised confidence in banks in the United States, the first exercises conducted by the EU exacerbated the general impression of crisis and uncertainty.

One reason for this is institutional flux: the 2009 and 2010 exercises were organized by the Committee of European Banking Supervision; the 2011 exercise was conducted by its successor, the European Banking Authority; the 2014 exercise was conducted by the European Banking Authority in conjunction with the European Central Bank Single Supervisory Mechanism; and the 2016 exercise was conducted, again, only by the European Banking Authority. Furthermore, the growing sovereign debt crisis in Europe contributed to scepticism about the 2011 evaluation (de Larosière 2013), with high-ranked banks such as Dexia filing for bankruptcy shortly after publication of very good results, and two Cypriot banks being rescued by European funds within two years of getting satisfactory results (EuroFinuse 2013: 14).[2] More recently, the assumption of direct supervisory powers by the European Central Bank was resisted by influential countries, especially Germany, which led to the 2014 stress tests allegedly being designed to conceal significant problems in certain banks (for a different and more optimistic view, see Violle 2017: 433). Consequently, the institutional and methodological structures associated with systemic risk management were met with a considerable degree of scepticism in Europe, with stakeholders openly questioning and even mocking the efficacy of the stress test and its vulnerability to market interests represented by national supervisory authorities.

The case of financial benchmarks, though originating outside the supervisory realm, also merits attention, as it reinforces the impression of fragility and error in the realm of facticity. The sudden devaluation of asset-backed securities and collateralized debt obligations that had been given high ratings was at the heart of the 2008 financial meltdown and dealt a major blow to the credit ratings agencies, whose reputation had been good. In the end, regulators continued to endorse the use of ratings when assessing securities as collateral, although now people had a clearer notion of the system's fallibility. Problems with the reliability of financial benchmarks were further intensified by the Libor manipulation scandal, which erupted in 2012 after an investigation led by the UK Financial Services Authority revealed evidence of regular rigging of the rate by Libor panel banks, at least since 2005 (see Wheatley 2012), and suspicion soon extended to Euribor and other reference rates (see European Commission 2012: 2; Lopes 2017). The result was the inclusion of financial index manipulation in the revised EU Market Abuse Directive and extensive reviews of financial benchmarks carried out under the auspices of political bodies such as the European Commission and the European Parliament, and of financial bodies such as the International Organization of Securities Commissions, the European Banking Authority and the European Securities and Markets Authority.

Still, it is possible to conclude that nothing has substantially changed. Regulators remain faithful to the production of reputedly impartial technical assessments, and Libor and Euribor continue to exist, though the underlying interbank money markets remain only sporadically active and efforts to find replacements are underway. There seems to be, in truth, no immediate alternative to facticity and technical normativity, which remain deeply embedded in normal financial practice and institutional design. However, the proverbial trust in numbers appears to have decreased since 2008, with eyebrows now rising suspiciously at graphs, numbers and terminologies whose complexity and incomprehensibility were formerly accepted as signs of expert knowledge (see Tett 2009: 10, 131). Financial facticity is thus in tension with what could be called, following anthropologists of money (e.g. Guyer 2004; Maurer 2005) and some philosophers (e.g. Searle 2005), the fictional character of money and its doubles. The fictional status of money for those scholars reflects the fact that money is, ultimately, a social convention. It is this fictional element that justifies radical questions about money and finance, such as: are stress tests and financial benchmarks trustworthy because they are accurate representations of markets, or are markets the outcome of techniques of representation? Thus, while there appears to be no immediate alternative to financial facticity, people seem to stumble across more and more fictions along this road of facts.

Conclusion: Coherence Lost?

Notwithstanding its recurrent crises, finance in the neoliberal era appears to have stabilized around three related movements, each with its own points of tension. The first is the interplay of innovation and wrongdoing prompted by the practice of regulatory arbitrage, which is tolerable but has the potential to lead to the future perception of delinquencies and misdemeanours. The second movement is the development of an international framework seeking to free finance from politics and to harmonize it through soft law. This development has, however, been hindered by national governments seeking to defend the specificities of their own financial regulation and by the instrumental use of state sovereignty by influential financial conglomerates to create zones of fiscal liberalization and thus extend regulatory arbitrage across national borders. The third and last movement is the predominance of technical knowledge and numerical accuracy over social conventions, promoting an image of facticity as the concrete stuff that finance is made of.

The conjunction of these movements has been complex and has led to different sorts of economic wrongdoing, ranging from open fraud to the ingenious exploration of regulatory loopholes and to putting pressure on regulators to grant legal exemptions. Despite this complexity, the evolution of these parallel movements enabled the globalization of finance, though the consequences of the financial crisis seem to have increased the tensions within each movement and rendered their conjunction more problematic. For instance, strong state intervention after the crash introduced some novel elements within the tension between the national and international levels. One of these elements appears to be a re-politicizing of finance, with state positions no longer motivated predominantly by corporate interests in the way that they had been since the 1970s, but also motivated by the effects of the crisis on their countries. Another element, however, points in the opposite direction, to constrain the politics of finance. That is the fact that states, at least in Europe, are under greater pressure to conform to the demands of regulators at the level of the EU, most obvious after the granting of direct supervisory powers to the European Central Bank. The consequences of the crisis also increased the tension between facticity and fictionality, for it became apparent that the technical expertise and numerical indicators that had been the main glue of the global financial system under neoliberalism are no longer as clear-cut or trustworthy as they were once thought to be.

To a large extent, official reactions to these circumstances translated into more normative material, thus reaffirming the common understanding of wrongful behaviour as the violation of clear rules. However, the status of such rules appears to be changing, along with regulators' position on the subject. For instance, the flow of new standards, recommendations and guidelines coming from European institutions is impressive – what some call a 'regulatory tsunami'. Moreover, such soft-law instruments are becoming less voluntary and more mandatory: as one securities supervisor I spoke to put it, the 'comply or explain' principle must now be taken to mean 'comply or comply'. At the same time, supervisors appear more sceptical of the efficacy of these rules, testifying to a growing distance between the words of regulatory texts and normal banking practice. The most conspicuous example of this is the existence of institutions that are too big to fail and too big to prosecute, which is leaving many financial regulators with a sense of impotence.

In sum, contemporary financial supervision appears to be marked by the inevitability of errors on the part of supervisors and regulators, and of dubious innovation on the part of market actors. True, all this adds to the same sense of economic deviance and instability that has accompanied the expansion of neoliberalism, but now it is official: wrongs and errors form part of the worldview of financial supervisors and any illusion of control over financial institutions through perfected norms is gone. In this respect, the current European situation bears some similarity to the situation in Japan following the disaster at the Fukushima nuclear plant (see Riles 2013). The efficient-market hypothesis that sustained the world of financial derivatives has been discredited, giving way to a loose epistemological combination of quantitative and qualitative outputs, and that involves both expert and lay people – though only to a certain degree and only under conditions established by regulators themselves. A sign that the lines separating different financial experts from lay financial users are becoming fuzzier in Europe is that more and more technical issues have become the subject of political discussion; even the Treasury of the United Kingdom (HM Treasury 2013: 28) refers to the 'political visibility' of bank's balance sheets as one positive outcome of European stress tests.

Since 2008 some of the former coherence appears to have been lost, however there has been no major discontinuity of the sort that would, following Janet Roitman (2014), amount to crisis. Rather, the general picture now is one with more contrasting tones: crisis continues – crisis did not occur – crisis is over – crisis is yet to come.

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Notes

1. Alongside this process of institutional harmonization, some important regulatory steps were taken, like the Markets in Financial Instruments Directive (MiFID), revised in 2014, as well as the project of a European directive regulating insurance businesses (Solvency II), which came into effect in 2016.
2. These and other drawbacks were acknowledged by participants in a 2013 EU conference and public consultation dedicated to the European System of Financial Supervision (see European Union 2013).

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