Ten issues for regulators to consider

Smits, R.

Print | Close

Ten issues for regulators to consider

René Smits devises ten key issues that European financial legislators must consider when constructing the post-crisis regulatory framework

Author: René Smits

Source: Central Banking Journal | 17 May 2010

The credit crisis has shown the inadequacy of current regulation and supervisory arrangements. That is the consensus among most commentators and contributors to the debate who, otherwise, often strongly disagree. Among these many contributors, the Group of 30 has come up with proposals for improving regulation[1], supervisory agencies have proposed to adopt new methods of supervision[2], and already existing current measures have been reinforced, at national[3] and supranational levels.[4]

Supervisory arrangements in Europe are subject to review. The end seems in sight for the so-called Lamfalussy framework which was established to combine national supervision with European Union (EU) harmonised rules translated into national law, and free movement of capital and freedom to provide services across borders. This translation exercise often involved different manners of implementation and gold-plating of the EU norms. This framework will be replaced by post-De Larosière[5] arrangements. There is a lot to be said about the (in)adequacy of these arrangements[6] but this article focuses, instead, on rules relevant for the enforcement of prudential standards in the single market, as well as on their contents and their format.

This is not a blueprint for European legislative reform in the financial sector. It is a bird's eye view of ten issues that seem to need attention, if not redress.

1. The lack of a single rule book
A single rule book has been proposed by Jacques de Larosière: abolishing exemptions and exceptions that are now still permitted under EU directives would lead to such singleness of the norms. Enshrining them in regulations instead of directives would make them directly effective across Europe, as there would be no need anymore for national transposition. Moving away from directives and adopting supervisory rules in regulations would also bring closer the achievement of a common EU rulebook. This has been called for by the industry[7], by the ECB[8], as well as being one of the recommendations in the De Larosière Report.[9]

2. Divergent definitions of credit institutions
Although the EU has adopted a single definition of the term credit institution[10], EU rules permit national legislators to use divergent concepts as long as they cover the entities that conform to the European definition. Thus, overlap is permitted. The divergence of national definitions of what is in normal usage called a bank means that the scope of prudential supervision may be different from one member state to the next. This may be a weak spot in the EU-wide regulation of the financial sector, as mentioned in the De Larosière Report[11], carried over from the beginning of the internal market. When European legislators could not agree on a common definition, they agreed to define what should at least be called a credit institution and to list the activities which any undertaking so defined and authorised may engage in across the internal market. It seems time now to agree on a single definition to prevent any possibility that certain activities may be carried out in one member state with, and in another, without a banking license. Even when there are no concrete examples of use being made of this loophole, it is important to bridge discrepancies between supervisory concepts. We have seen where limits on the supervisory scope may lead to.

3. Jurisdictional delimitation
Another area of attention for the legislator should be the limited applicability of national rules. As an inevitable result of the reliance on national law as the immediate source of rules pertaining to the finance industry, even where these rules translate EU or Basel agreements, measures adopted under national law will largely have effect only within each state's territory. This has the following consequences. Under some laws, the (natural or legal) persons subject to the laws of a certain state are held accountable for following these norms even when operating elsewhere. In other cases, national law attaches to persons operating, products made or instruments issued under that law and does not have extraterritorial effect.[12] This means that national measures should be very well attuned in order for them to be effective in the internal market. An example concerns the prohibitions on naked short selling: that is, the sale of securities which the seller does not (yet) own or has not yet borrowed from a third party before entering into the sales contract. These prohibitions, issued by several authorities at the height of the crisis[13] may not have been fully effective because of their limited validity beyond national borders.[14] Such a prohibition may be

applicable to stock exchange transactions within the member state concerned. Alternatively, it may apply to transactions in securities issued by legal entities created under the laws of that same member state. In the latter case, the enforceability of such a prohibition may be difficult as other states' agencies are not likely to prosecute infringements even assuming they would have the legal authority to do so. In the former case, prohibited transactions may have been effected on other stock exchanges, or in over-the-counter transactions. Transactions may even have been effected on another of the bourses operating under the same Euronext umbrella that in one of them would have fallen under a prohibition. Of course, this problem of jurisdictional limitations to rules issued by multiple agencies in the same market affects areas otherthan the example given of an emergency measure. This calls for federal legislation replacing dispersed state law: harmonising the ground rules will not do if the application in practice does not ensure effective regulation of market behaviour, especially in times of crisis. As a first step, emergency regulations may be adopted which would give the newly formed European Supervisory Authority over the securities industry the competence to enact prohibitions, such as the one on naked short selling imposed by national authorities in the autumn of 2008, on an EU-wide basis, after appropriate consulting of other regulatory agencies, including the ECB. The application of such a regulation, to be based on Article 352 of the Treaty on the Functioning of the European Union[15], should be triggered by one or more well-defined events, the existence of which could be identified by an appropriate authority, such as the Ecofin on a proposal by the European Commission and after consulting with the ECB.[16] It may very well be that there is a need to act decisively and jointly to ban entering into naked credit default swaps[17], which involves buying insurance against the default of a sovereign or corporate borrower without the buyer having an interest in the underlying bond.[18]

4. Divergent supervisory regimes

Close to the subject just discussed is the issue of divergent national supervisory regimes: the tool box given by national law to the supervisory authorities may vary from state to state, reflecting own preferences, national traditions and local peculiarities. Even when the prudential norms have been enshrined in a single rule book, national supervisors will still rely on the instruments given by national law to enforce these norms. This may lead to situations in which one supervisor can adopt certain corrective measures, but another involved in the supervision of a cross-border banking group, cannot. More likely, even powers to use similar looking measures may have been accorded in such a way that their effect varies enormously in practice. Differences exist in the possibilities to gently whisk institutions in difficulties towards a safe haven or to direct them in a more commanding manner to better performance, both economically and normatively. These differences may undermine the effectiveness of national responses and make effective coordination difficult to achieve in practice. An issue which requires special attention in this regard is the reliance of the supervisor on accountants and auditors. Reliance by the micro-prudential supervisor on reporting by the financial institution's auditors is likely to enhance the quality of supervision as the external accountants are responsible for financial reporting and will be the first to know of (potential) losses. He or she is ahead of the supervisor. Rules requiring auditors to report such losses to the supervisors were introduced long ago but may vary among member states and may be too lenient.

5. Differing resolution regimes

Another issue concerns an EU-wide resolution and insolvency regime for banks. That banks operate internationally but come home to die has been much cited during the crisis. This state of affairs cannot endure in a single market. Thus, Europe should move away from merely recognising national measures applied to other parts of a financial institution operating across borders[19] and organise EU rules and mechanisms for resolution and winding-up. The issues of harmonisation of supervisory powers and a possible EU-wide resolution regime for banks are the subject of a consultation by the commission.[20] Here, as well, the time for action is now.

6. Duplicative reporting regimes

The issues of a single rule book and of similar supervisory instruments to ensure adherence to the rules are connected to the issue of the many divergent and duplicative reporting requirements to which financial institutions are subject. Divergent rules form a hindrance for a truly common market. Tax, language and cultural differences are sufficient blockages for a real retail financial market at EU level. There is no need for unnecessary supervisory differences to add to this. Banks and other financial institutions should be rigorously supervised. But there is no need for inefficiencies in reporting to various authorities on the same or similar matters. Such hindrances derive from bureaucratic rigour instead of supervisory thoroughness. They hinder efficient enterprise. With a single rulebook, the issue of one central point of delivery of data becomes relevant. The agency which would collect these data should spread them over the other authorities concerned. This would seem more efficient and prevents communication problems such as those that happened during the credit crunch when supervisory exchange of information came to a halt.

7. Information collection

The issue of collection of information is addressed by Article 20 of the proposal for a Regulation and establishing a European Banking Authority.[21] Pursuant to this provision, supervisors and other public authorities of the member states are to provide this authority "with all the necessary information to carry out the duties assigned to it by this Regulation." If these authorities do not comply in time, the Authority may request information directly from the relevant financial institutions and other parties. The adoption of such provisions would be a great step forward, albeit that the powers seem to be very widely drawn. Such clauses would not, however, change the lack of uniformity in exchange of information provisions among supervisors at state level.

8. Cooperation between home and host supervisors

Without going into the question of whether the current supervisory division of responsibilities between home and host state supervisors is tenable in the European internal market[22], the material rules on cooperation among supervisors merit serious attention. Cooperation among the supervisors of the authorising state (home state) and the member state in which a financial institution operates through a branch or cross-border provision of services without a physical presence in the recipient jurisdiction (host state) has not been extensively regulated in EU directives. They provide the ground rules in lois-cadres, which national law needs to implement to become effective. By nature, the 27 national jurisdictions have different methods and use different terms to implement this cooperation. National competent authorities have entered into mutual agreements to fill in these gaps. These so-called memoranda of understanding (MoUs) are mostly not in the public domain and, therefore, lack transparency: neither the financial institutions concerned nor their clients or shareholders, let alone interested third parties have access to the precise arrangements agreed.

Moreover, although these MoUs are based on models, they contain divergent language depending on the authorities among whom they have been agreed, reflecting the differences in supervisory approaches in the different member states. This potentially undermines the level playing field of the internal market. In so far as the current, low-key level of establishing working arrangements among supervisors prevails under the new rules to be adopted in the wake of the De Larosière Report, attention should be focused by supervisors and those to whom they report, as well as by academia, on these arrangements. Getting to know the precise rules under which day-to-day cooperation, or the absence thereof, is modelled, is a first when it comes to seeing if and how authorities meet the demands of post-crisis supervisory standards. It is clear that one such MoU, concluded on 1 June 2008, miserably failed. The arrangements sketched in this lengthy document[23] that required further elaboration among its 114 parties did not help avoid the crisis nor, so it seems, was of much use overcoming it. Moreover, the free-market ideology underlying it seems up for revision as well. We need arrangements that reflect both the post-Lehman reality that institutions which are too large, or too interconnected to fail, must somehow be either kept alive or exit the market in an orderly fashion, closely overseen by the authorities[24], and remain faithful to the concept of open markets.

9. Confidentiality and exchange of information

The mere fact that many financial institutions are subject to three forms of supervision, exercised by more than one supervisory agency, gives rise to problems of mutual attunement. This does not even take into consideration that credit institutions play a role in the implementation of the single monetary policy in the European economy, and will be confronted with rules pertaining to the safety of payments systems.[25] Thus, financial institutions are supervised in respect of their soundness on the basis of prudential supervision, the rules for which are largely harmonised EU-wide and worldwide but which is exercised at the national level by agencies that may, or may not, coincide with the national central banks. Financial institutions are also supervised in respect of their conduct on the market by supervisory agencies that perform oversight of the securities markets and which have the protection of the small consumer (depositor, insurance policy holder, investor) as their remit. Finally, financial institutions are subject to systemic overview by central banks that takes into account the safety and soundness of the financial system as a whole. The issue of different authorities performing these tasks concerns the institutional set-up of supervision and, therefore, is beyond the scope of this contribution.

The challenge of ensuring that the various financial supervisors and central banks sustain each other in the execution of their tasks by providing ample information to one another, becomes harder to meet because of the lack of uniformity in EU directives and, hence, in national law, when it comes to the regulation of professional secrecy and exchange of information. One has to consult the various legal instruments applicable in order to deduce from them the actual level of exchange of information permitted or prescribed. What is more, these legal instruments vary in wording and strictness. Sometimes, information has to be volunteered by one authority to the other when this is essential for proper supervision, sometimes information has to be given only on request. The latter means that the requesting authority needs to take the initiative. The former implies that each supervisor takes a lateral look at the needs of other supervisors involved.

In other directives, however, there is no such distinction and all information needs to be shared when required for the purposes of carrying out the duties therein and in the interest of prudential supervision.[26] When a financial institution exercises banking activities and engages in securities business, any discrepancies in information handling between the relevant applicable rules may hinder its supervisors to effectively oversee its activities. Also, such formal obstacles to the exchange of information may give authorities an excuse for not providing each other with adequate information, especially in times of crisis. There are numerous indications that this has indeed occurred. Timely and adequate information exchange between supervisors and between supervisors and central banks seems to have been lacking in more than one case. Potential blockages, or loopholes, in prudential rules allowed agencies to give priority to a narrowly conceived national interest rather than to the common good in exercising their duties. A single set of rules, clear and common to all[27], would be highly preferable to the current patchwork of provisions.[28] Again, this may require taking them on board in a single, directly effective legal instrument, meaning an EU regulation.

The European legislator may make use of the opportunity to clarify the extent of the ringfencing of supervisory data in the case of parliamentary inquiries into the conduct of supervision. This is not expressly regulated in the texts adopted but may have been the subject of notes in the minutes of Ecofin Council meetings adopting the directives. The legality of such information sharing with lawmakers and ministers is likely be interpreted differently and applied in inconsistent ways across the Union. Responsibility before the European Parliament should also be adequately provided for, including - as with national parliaments - rules protecting the confidentiality of information while allowing for scrutiny of the supervisors. Screening information by a select committee, itself subject to strict confidentiality requirements, may permit such scrutiny with the entire parliament relying on their peers' conclusions from insight into the specifics of cases and the general public and competitors aware of such conclusions without seeing the detailed information upon which they are based.

10. Interaction between private and supervisory law

Another issue which may have to be further tackled is that of the interplay between contract clauses and the use of supervisory instruments. The current state of affairs may undermine supervisory intervention since the contractual clauses requiring financial firms to notify their counterparties of such action may become self-fulfilling prophecies. Supervisors may then become reluctant to make use of instruments knowing that default clauses may affect the soundness of the financial institution they seek to steer into safe havens. Acceptable clauses would seem to be those which require a debtor to inform lenders that it has been placed under winding-up procedures or similar arrangements which may end up with its liquidation.

If financial institutions also enter into agreements that require them to inform counterparties of actions by their supervisors such as heightened supervision or the appointment of a special representative overseeing the board, the very act of notifying lenders of such an event will undermine such supervisory action. Counterparties will know that the institution is, or may soon be, in real trouble, and they may terminate their financing and will likely refrain from further lending. On the basis of clauses that allow a counterparty to rely on the default of its debtor visà-vis another debtor to call its own debt due and payable (cross-default clauses), such a notification may spread in the market and may even spur a bank run.

The impact of contractual clauses on supervisory action has been the subject of documents issued by the UK authorities. Initially, only liquidity assistancerelated issues came to the fore.[29] Attention was focused on whether certain causes can impact the ability to obtain liquidity funding from the Bank of England. In a later document[30], the Financial Services Authority did not see sufficient grounds for an outright ban of certain contractual provisions as this would impinge too much on the freedom of contract. Even though the Banking Act 2009 may have addressed this issue, any adequate solution should take into account the impact of contract clauses on supervisory intervention by authorities outside the United Kingdom, as English law often applies to transactions entered into by banks established elsewhere. A financial institution that has entered into such provisions may hold the supervisory authorities hostage.

The supervisor is damned if it intervenes because it risks exacerbating the problem through the effect of cross-default clauses leading the imperilled bank's counterparties to stop funding it, and it is damned if it doesn't as it will later be charged with trepidation and shying away from effective action when the bank could still have been rescued. Thus, legislative action may be called for to remedy the effect of such clauses. The financial institutions themselves should consider whether entering into such clauses doesn't undermine the viability of the company and may thus be against corporate interests.

De Larosière falls short

The above issues have been highlighted as points of concern for the legislator, in continental Europe and in the United Kingdom. Properly addressing them should help supervisors to carry out their duties more effectively. The post De Larosière supervisory arrangements, even though a major step forward, still fall short of the required effective supervision at the EU level. For this, changing the treaties will be required. In the meantime, a joint operation of national supervisors within a renewed framework, truly acting as a network, may help to prevent a recurrence of the cross-border disputes that marred European financial integration. Whether the proposed arrangements and the areas suited for rulemaking listed in this paper may help forestall another crisis is debatable. This requires far more. We need far stricter prudential standards, a solution to the too big to fail (and too interconnected to fail) issue, superior supervisory arrangements at national, European and global level and a turn towards sustainable, client-serving banking. Only a real '*Turneround*'[31] by the financial services industry itself may help prevent a new crisis. The industry must take a client-based attitude and a longterm view to serving society at large, including those excluded now.

Research assistance by Carl Mair and Mathieu Bui is gratefully acknowledged.

Notes

1. G30 Financial Reform - A Framework for Financial Stability, (15 January 2009), at: http://www.group30.org/pubs/recommendations.pdf.

2. See the Basel Committee on Banking Supervision's current proposals for consultation: Strengthening the resilience of the banking sector and International framework for liquidity risk measurement, standards and monitoring (17 December 2009), at: http://www.bis.org/press/p091217.htm.

3. For the UK proposals, see HM Treasury Reforming Financial Markets, (July 2009), at: http://www.hm-treasury.gov.uk/d/reforming_financial_markets080709.pdf. For the US proposals, see the Department of the Treasury, Financial Regulatory Reform - A new foundation: rebuilding Financial Supervision and Regulation (June 2009), at: http://www.financialstability.gov/docs/regs/FinalReport_web.pdf.

4. For example, Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay, Official Journal of the EU ('OJ'), No. L 68/3, 13 March 2009.

5. See the 'De Larosière Report' (Report of the High-Level Group on Financial Supervision in the EU, Brussel, 25 February 2009), and the Commission proposals establishing European Authorities in the fields of, inter alia, banking, securities and markets, as well as a European Systemic Risk Board and a European System of Financial Supervisors, access at: http://ec.europa.eu/internal_market/finances/committees/index_en.htm#package.

6. See my article European post-crisis supervisory arrangements- a critique to be published in the forthcoming issue of Concorrência & Regulaçao, issued by the Instituto Europeu da Faculdade de Direito de Lisboa (European Institute of the Law Faculty of Lisbon) and the Autoridade da Concorrência (Portuguese Competition Authority).

7. See, among others, the European Financial Services Round Table ("EFR") Towards a Lead Supervisor for Cross-border Financial Institutions in the European Union, June 2004, see p 16.

8. See the Opinion of the European Central Bank of 20 February 2004 at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 93/6/EEC and 94/19/EC and Directives 2000/12/EC, 2002/83/EC and 2002/87/EC of the European Parliament and of the Council, in order to establish a new financial services committee organisational structure (COM(2003) 659 final) (CON/2004/7), OJ No. C 58/23, 6 March 2003, and, most recently, Opinion of the European Central Bank of 5 March 2009 at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (CON/2009/17), OJ No. C 93/3, 22 April 2009.

9. De Larosière Report, see n 5 above, paragraph 109, p.29: "Future legislation should be based, wherever possible, on regulations (which are of direct application). When directives are used, the co-legislator should strive to achieve maximum harmonisation of the core issues. Furthermore, a process should be launched to remove key-differences stemming from the derogations, exceptions and vague provisions currently contained in some directives (...)."

10. See Art 4 (1) (a) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (the 'Banking Directive'): "an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account".

11. De Larosière Report, see note 5 above, p 28, paragraph 105: "This is a source of problematic divergences between members that can lead to laxer supervision and regulatory arbitrage".

12. An interesting issue is whether a ban on a trader imposed by the Financial Services Authority would have extraterritorial effect and also ban him or her from exercising a similar function elsewhere in the EU. I would argue that the internal market make-up and the requirement of loyal cooperation in the Union (Article 4 (3) Treaty on European Union) would weigh in favour of respecting the FSA's decision elsewhere but a case can be made against such effect, as well. See Ex-Merrill trader barred in UK, Financial Times, 17 March 2010.

13. For the UK: Shortselling (No 2) Instrument 2008 (FSA 2008/50), (18.9.2008) among others, was enacted to regulate this behaviour, at: http://www.fsa.gov.uk/pubs/handbook/instrument2_2008_50.pdf. Similar, though not identical measures, were also taken in France, see Communiqué de presse de l'AMF sur l' interdiction des transactions non sécurisées et transparence des positions courtes sur titres du secteur financier (19.9.2008), at: http://www.amf-france.org/documents/general/8421_1.pdf). See, also, the equivalent Dutch measures, accessible at: http://www.afm.nl/en/professionals/afm-voor/effectenuitgevende-ondernemingen/marktmisbruik/maatregel-short-selling.aspx

14. See, in a wider context, Emilios Avgouleas, A New Framework for the Global Regulation of Short Sales - Why Prohibition Is Inefficient and Disclosure Insufficient, SSRN research paper (May 2009) at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133214, revised version to be published shortly in the Stanford Journal of Law, Business, and Finance, Vol. 16, No. 2, 2010.

15. TFEU, the new name for the EC Treaty after the entry into force of the Treaty of Lisbon.

16. The provision in the proposals for regulations establishing the European Supervisory Authorities, giving the commission, the Council or the European Systemic Risk Board, to be established in following the De Larosière Report, the authority to declare an emergency situation, comes to mind.

17. Commission to back curbs on credit default swaps, Financial Times, 18 March 2010.

18. A transaction which is often likened to entering into a fire insurance contract for one's neighbour's house. A better description is given by Wolfgang Münchau, Time to outlaw naked credit default swaps, Financial Times, 1 March 2010: "A universally accepted aspect of insurance regulation is that you can only insure what you actually own".

19. In Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions, OJ No. L 125/15, 5 May 2001.

20. See the Commission's Communication An EU framework for Cross-Border Crisis Management in the Banking Sector, Document COM(2009) 561 final, 20 October 2009, at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0561:FIN:EN:PDF.

21. Document COM(2009) 501 final, Brussels, 23 September 2009, at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0501:FIN:en:PDF. See, also, Article 56 on professional secrecy and exchange of information with national supervisory authorities. Similar rules may be found in the proposal for the establishing a European Securities and Markets Authority, Document COM(2009) 503 final, Brussels, 23 September 2009, at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0503:FIN:EN:PDF.

22. See The Turner Review - A regulatory response to the global banking crisis, paragraph 2.10 (ii), p. 100 (FSA, March 2009), at: http://www.fsa.gov.uk/Pages/Library/Corporate/turner/index.shtml.

23. Memorandum of Understanding on cooperation between the Financial Supervisory Authorities, Central Banks and Finance Ministries of the European Union on Cross-Border Financial Stability, at: http://www.ecb.int/pub/pdf/other/mou-financialstability2008en.pdf.

24. Depending on the viability of the enterprise on the market at the moment of decision-making.

25. Even this enumeration does not do justice to reality as other agencies will be involved in overseeing market behaviour, notably competition authorities overseeing mergers and acting against collusion and abuse of dominance.

26. See Article 58(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ('MiFID') OJ No. 145/1, 30 April 2004.

27. Including information sharing between the various authorities responsible for prudential supervision of financial firms and for their market behaviour and central banks.

28. The Omnibus Directive proposed by the commission to amend financial sector directives to permit exchange of information under the De Larosière regime does not respond adequately to this need. See the Proposal for a Directive of the European Parliament and of the Council Amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, Document COM(2009) 576 final, 26.10.2009. See, also, the ECB Opinion of 18 March 2010 on this proposal: (CON/2010/23), OJ No. C 87/1, 1.4.2010.

29. Financial stability and depositor protection: FSA responsibilities, FSA 08/23, December 2008, pp. 11-13, available at: http://www.fsa.gov.uk/pubs/cp/cp08_23.pdf. See, also, Financial stability and depositor protection: further consultation, Bank of England, HM Treasury and the FSA, July 2008, Cm 7436, at: http://www.official-documents.gov.uk/document/cm74/7436/7436.pdf.

30. Banking and compensation reform Including feedback on CP08/23, CP09/3, CP09/11 and CP09/16, Policy Statement 09/11, FSA, July 2009, p.66, at: http://www.fsa.gov.uk/pages/Library/Policy/Policy/2009/09_11.shtml.

31. A serious turn-about in the sense meant by the FSA chairman Adair Turner, who has been a vocal defender of real change in banking practice and regulation. See his Turner Review, see n. 22 above, and his cri de coeur in an address to the British Bankers' Association Annual

International Banking Conference on 30 June 2009, at: http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/0630_at.shtml: "It is therefore essential that we learn lessons and accept the need for radical change - change in the style of supervision, change in the regulations applied to banks, and changes in the banks themselves. We hope to return to more normal economic conditions: we must not allow a return to the 'normality' of the past financial system".

Print | Close