When Frames Are Not Enough: Consumer Safety and National Interests in EU Financial Market Regulation

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Abstract

The article investigates the predominant governance modes during the formulation of three EU directives in the wake of the global financial crisis as well as the amount of policy change they introduced. The directives regulate deposit guarantee schemes, alternative investment fund managers, and the investor protection scheme. We illustrate that different governance modes were employed in a sequential or nested order during their formulation. The EU's financial market reforms were based on *technocratic* ad hoc committees, *negotiations* involving all EU legislative institutions, and to a lesser extent on the *voting* and *executive* modes. All three reforms tend to strengthen the *delegation* mode in financial market regulation and supervision. The sequencing and nesting of modes in these three cases casts doubts on assessments that posit close links between issue characteristics and governance modes. Rather than being determined by issue characteristics, the selection of governance modes is strongly influenced by the EU institutional context. There is disagreement on whether the financial market reforms are 'gesture politics' or whether they introduce new regulatory paradigm. Based on three indicators of political change—the perceptions of the policy advocates, the frames employed during the policy debate, and the extent of institutional reform—we find that these directives cover a greater scope and tend to be stricter than the previous legal provisions. They are embedded in the new master frame of stabilizing financial markets and enhancing consumer safety. In institutional terms, they are part of a transformation of the EU's regime for financial market regulation that entails institutional layering and conversion.

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1 Introduction

The global financial crisis in 2007 highlighted some flaws in the design of the Economic and Monetary Union and in the regulation of financial markets in the European Union (EU). Since the onset of the crisis, the EU institutions have introduced more than 40 legislative proposals on financial market reforms which cover a wide variety of aspects.

We study two dimensions of these reform processes. First, we analyse the governance modes that predominate in these reforms as many observers are concerned that democracy has succumbed to the crisis. Secondly, we seek to identify the amount of change that has taken place through these reforms because assessments of these changes vary tremendously. Regarding the amount of change induced by these reforms, there is widespread disagreement on whether the measures taken are merely 'gesture politics' (Buckley and Howarth 2010) or whether they introduce alternative regulatory paradigms (Quaglia 2011: 678). We gauge the extent of change in the reform of EU financial governance by studying three cases of financial market regulation: Alternative Investment Fund Managers (AIFM) (European Commission [EC] 2009), Investor Protection Scheme (ICS) (EC 2010a), and Deposit Guarantee Scheme (DGS) (EC 2010b). We propose to identify the extent of change in each case by using three indicators: the policy participants' perceptions of the amount of change, the frames they held throughout the policy debates, and the institutional changes introduced by the reforms. Regarding the relationship between democracy and the resolution of the economic crisis, we identify the governance modes that apply to these reforms and suggest that the decisions on these proposals are generally illustrative of the European Union's (EU) patterns of governing the financial market crisis. We demonstrate that different modes of governance have been employed during these reform processes: the *negotiation* mode, the *voting* mode, the *delegation* mode, the *executive* mode, and the ad hoc *technocracy* mode.

The analysis is part of research conducted for the INTEREURO project on interest groups in the European Union (INTEREURO 2014; for details see: Beyers et al. 2014). The three cases are part of a sample of 20 EU directives proposals that were proposed between 2008 and 2010 and received substantial media attention. We study the decision-making processes and the consequences of the proposals drawing on process tracing techniques, qualitative content analysis, as well as interviews with policy makers and interest group representatives at EU level and in four member states (Germany, Netherlands, Sweden, United Kingdom). This selection of countries assures some variation with respect to member state size, duration of EU membership, varieties of welfare state and capitalism, and the state-interest group model (Hall and Soskice 2001; Kohler-Koch and Eising 1999; Lijphart 1999; Scharpf and Schmidt 2000). In sum, we suggest that the course of these three EU reforms follows a specific sequence of governance modes and that the three directives modify EU financial market regulation in a non-trivial fashion.

2 The Regulation of the EU Financial Market

While the efforts to resolve the EU's financial market and the Eurozone crises are frequently analysed as unique events, it seems useful to connect their analysis to general political science approaches. Thus, drawing on the general literature on governance modes, Hendrik Enderlein discusses the democratic credentials of financial and economic reform processes during the years of decision-making on the financial and economic crisis since 2008. He suggests that democracy has lost sway and that economic governance has increasingly been marked by the rise of *ad-hoc technocracies* (Enderlein 2013: 715). These have grown in importance due to specific requirements of policy-making during economic crisis. To EU scholars this means then that the EU's democratic deficit has further increased in recent years.

Enderlein (2013) argues that economic issues with specific characteristics correspond best with specific modes of governing. The main determinants of the governance modes would be the welfare and distributive effects of the issues and the foresee ability of these effects. With the German example of a national parliamentary democracy in mind, Enderlein distinguishes among the following modes: Policies can be *delegated* to non-parliamentary institutions such as central banks if they raise welfare and if these effects can be foreseen. Policies that redistribute welfare and whose effects are foreseeable will be taken in a *voting* mode ('Abstimmungsmodus'). These issues will be debated by the democratic parties and institutions and become part of election programs, whereas policies that redistribute welfare but whose effects are rather ambiguous fall under the remit of the *executive* mode, that is decisions will be taken ad hoc by executive bodies without involving parliament. Policies that tend to increase welfare but whose effects cannot be foreseen are more likely to be taken in a *negotiation* mode which is a mixture of the voting and the delegation mode including protracted negotiations among the involved actors. Furthermore, in economic crises, *ad-hoc technocracies* are being implemented. Here, experts deal with those issues for which it is difficult to conduct sound and precise cost-economic benefit analyses, estimate redistributive implications and establish compensation mechanisms based on policy deliberations (Enderlein 2013: 726). We draw on this framework that seeks to add to the literature on decision-making beyond parliaments to which Gerhard Lehmbruch's study of corporatism has contributed tremendously. Applying it to EU level decision-making yields not only the expectation that the *voting* mode is here less relevant than in national politics as a result of the lack of a European public. It also requires us to make some adjustments compared to its usage in parliamentary democracies. Notably, we take the *executive* mode to mean intergovernmental negotiations and decisions at EU level, as the EU's main executive institution, the European Commission, is not recruited from within parliament and often referred to as the member states' agent in studies of political *delegation*.

Furthermore, we seek to demonstrate that these governance modes are not mutually exclusive when working towards policy solutions. They can be employed in a sequential or nested order in public policy-making. We argue that the

groundwork of the EU's financial market reforms was laid in a *technocratic* ad hoc committee, but that the reforms were then prepared and decided in the *negotiation* mode involving all EU legislative institutions. Furthermore, important elements of the *voting* and *executive* modes entered the policy debates and shaped their outcomes. Finally, all three reforms are meant to strengthen the *delegation* mode in financial market regulation and supervision.

The EU's regulatory regime of the financial market had been put in place before the financial market crisis in 2007. It was based on the Financial Services Action Plan 1999 and the *Lamfalussy* framework that has altered the procedures for EU financial legislation and regulation since 2001. There is widespread agreement that these measures established only minimum standards and aimed mostly at strengthening financial market efficiency and integration (Posner and Véron 2010). They led to a 'decentralized model of supervision' with a very strong role for national regulatory authorities (Schammo 2012: 775). In short, a rather light-touch, decentralised *delegation mode* came to dominate EU financial market regulation and supervision that incorporated some elements of *negotiation*.

When the global financial crisis swashed in 2007 (Begg 2009), a first set of reforms introduced changes to this institutional framework. The European Commission drew on expert advice to develop proposals for the general reform of financial market regulation. As a form of *technocratic ad-hoc governance*, an expert committee, the *Larosière* committee, was set up to review EU financial market regulation in 2008 (de Larosiére 2009). Jacques de Larosière, a former director of the International Monetary Fund, was asked to set up a High-Level Group on Supervision that would consist of eight financial and economic specialists. This *ad-hoc technocracy* presented a report that included a causal diagnosis of the crisis and outlined several measures for policy and regulatory repair. Based on its recommendations, the European Commission (EC 2009) proposed a new regulatory regime. A European Systemic Risk Board (ESRB) with a strong role for the European Central Bank, the National Central Banks, and the European financial supervisors (see below) would be put in charge of macro-prudential supervision to monitor and assess systemic risks in European financial markets. The European System of Financial Supervisors (ESFS), which includes the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities Authority (ESA), would be put in charge of micro-prudential supervision. Generally, the supervision of financial institutions would be broadened to incorporate also the systemic risks that might emanate from their economic activities and instruments. Hence, based on recommendations developed through *ad hoc technocratic governance*, the *delegation mode* in EU financial market regulation was equipped with a firmer grip and it became more centralised. The ESFS transforms the three previous *Lamfalussy* level three committees into regulatory bodies with greater supervisory, coordinating powers giving them the task to develop a harmonised rulebook for financial market regulation while it continues to leave day-to-day supervision in the hands of member state authorities. An important argument against any greater centralisation of regulatory capacities at EU level was that the costs of regulatory failures would

not be borne by the EU institutions but by national taxpayers (Schammo 2012: 780). ESRB and ESFS were adopted in late 2010 (Regulation No. 1095/2010). It should be pointed out that *technocratic ad-hoc governance* is by no means new to the regulation of the financial sector in the EU and cannot be attributed to the crisis alone. Also the previous regulatory framework rested on recommendations of technocrats in the Committee of Wise Men, the so-called *Lamfalussy* expert group.

The three directive proposals that we study are part of the EU program to reform the economic governance of the financial sector. In this reform area, the *executive* (or intergovernmental) mode of governance—is not as strongly pronounced as it is in the revision of the economic governance of the Eurozone. As part of the EU's legislative reform package, the three reform processes involve the formal legislative institutions of the EU, the European Commission, the EU Council and the European Parliament (EP), as well as consultations with stakeholders in these proposals. The proposals have been debated in the *negotiation* mode which shows not only the controversies among the public actors that are presented in more detail below but also the involvement of non-state actors in the policy debates. We identified about 900 policy actors who participated in the EU level or national level consultations or who were mentioned in various media sources as having been involved in these proposals (excluding the EU institutional actors). About 50 % of these actors were visible in the consultations on the AIFM directive (458 actors), which attracted considerably more attention than the other two proposals. The most frequent types of actors are interest groups, companies, governmental actors, and public agencies. Interest groups were the modal type of actor on DGS and ICS, while companies were the modal type on the AIFM directive.

The EU institutions had reviewed and discussed these regulatory areas well before the financial market crisis of 2007, but did then not plan to take significant actions. Only the global financial crisis prompted greater action by the EU authorities in these areas to prevent further market failures and to increase the stability of the entire financial system. The Alternative Investment Fund Managers (AIFM) directive proposal aimed at harmonizing the requirements for entities engaged in the management and administration of alternative investment funds. It was meant to extend the *delegation mode* of EU economic governance to the hedge fund and private equity sectors while the ICS and DGS directive proposals aimed at revising existing EU directives on investor protection and deposit guarantee schemes. The AIFM directive was proposed in June 2009 and passed the EU's legislative 1 year later. The other two directives were proposed in 2010. While the DGS directive was passed in 2014, the ICS proposal did not lead to a legislative agreement till the time of writing. The European Commission (EC 2010c, d: 1) framed these two proposals as a 'package to boost consumer protection and confidence in financial markets' in July 2010 that was meant to protect bank depositors and retail investors (small investors). In the following section we analyse why these topics reached the EU policy agenda and what policy issues were debated.

2.1 Directive on Alternative Investment Fund Managers

The AIFM sector has become the subject of EU regulation because gradually a consensus emerged that hedge funds might have a systemic impact and be therefore brought under official oversight (Ferran 2011: 389). The *Larosiére* committee found it guilty of important transmission effects 'through massive selling of shares and short-selling transactions' (de Larosiére 2009: para 86, p. 24). The committee came close to recommending United Kingdom style national regulation as best practice (de Larosiére 2009: paras 86–87, p. 24) and recommended establishing an oversight institution that would gather relevant information from the industry and evaluate them.

This change of perspective emerged also from divergent economic structures and conflicting national views of the AIFM in the member states. First, hedge funds would seem to be important financial players in Liberal Market Economies (LME) while they tend to disentangle the close relations between banks and enterprises or across enterprises that prevail in Coordinated Market Economies (CME) (see Hall and Soskice 2001). LMEs like the UK where more than 80 % of the European hedge fund industry is located generally support the industry's position in favour of no, light, or self-regulation because they aim more at financial market innovation, emphasise competition in financial markets, and rely greatly on the industry's self-regulation (Quaglia 2011: 669). In contrast, CMEs like Germany or the Netherlands or countries with a 'state capitalism', even if transformed like France (Schmidt 2002: 5), tend to suggest tighter control of the hedge fund sector in order to prevent major disruptions of the established finance-enterprises nexus. Furthermore, the importance of the hedge fund sector as a major symbol for global 'shadow banking' and the systemic risks it entails must be stressed. The French President Sarkozy and the German Chancellor Merkel who have argued for a stricter regulation of the hedge fund industry well before the financial crisis were crucial in placing this issue on the EU's political agenda (Quaglia 2011: 670–671). Tighter control of hedge funds fit nicely with a 'pro-regulation rhetoric' of the French President to win public support for the upcoming elections (Woll 2012: 15). In several respects—the pursuit of domestic economic interests and of established regulatory ideas as well as the politics against a symbol of global financial capitalism—the financial crisis was a window of opportunity for the French and German governmental actors. Thus, while AIFM regulation was not fully subject to the *voting* mode, electoral considerations in some member states helped to place it on the political agenda as they had done earlier in the US presidential election in 2008. The election to the European Parliament in 2009 also placed the financial market regulation efforts firmly on the agenda of national and European parliamentary parties. Moreover, the French and German political leaders flagged the idea of stricter hedge fund regulation in international fora like the G20 and in the EU. Given the Franco-German tandem's pressure, the analysis of the *Larosière* committee, and two critical reports in the EP on hedge funds and institutional investors (EP 2008a, b), the European Commission reversed its initially reluctant position to regulate the sector and put forward a Directive proposal in 2009.

The *negotiation* mode shows *inter alia* that the Spanish and the Swedish Presidencies of the EU Council brought several revisions to the directive proposal. The ensuing compromise in the Council was mostly negotiated between on the one hand France and Germany, which were critical of hedge funds and blamed them for the proliferation of the financial market meltdown and on the other hand a coalition of countries led by the UK which argued that stricter regulation would drive financial companies out of Europe (McDermott Will and Emery 2009). The compromise solution established minimum standards for all member states and subjected all alternative investment fund managers who manage funds above a minimum size to authorization by their home member state supervisor and supervision according to commonly defined principles.

2.2 Directive on Deposit Guarantee Schemes

The financial crisis also triggered a review of the 1994 Directive on Deposit Guarantee Schemes that was meant to protect the deposits of bank customers. In 2009, the EU Council and the EP passed Directive 2009/14/EC which raised the coverage level of bank deposits by five times from 20,000 € to 100,000 €. The revised directive also shortened the pay-out period to a maximum of 35 working days and ended the co-insurance system according to which savers would have to bear a 10 % loss of their deposit guarantees. This revision of the 1994 Directive was part of the immediate firefighting against the financial crisis and meant to restore confidence in the banking sector. The bankruptcy of a number of banks during the financial crisis had drawn attention to the national deposit schemes. There was an increasing concern that the established levels of deposit insurance schemes might not be sufficient and that savers needed additional reassurance to prevent capital flights. At the same time, the member states had an interest in limiting state liabilities and a regulatory competition with regard to national guarantee schemes that was prompted by the Irish decision to guarantee savings deposits as well as a range of liabilities held by the country's six biggest banks (European Voice 2008a, b). This problem constellation is also the reason why the first reform of the DGS was agreed upon very fast and in an *ad hoc executive* mode. By agreeing on an increase of the coverage level and a minimum harmonisation of the national deposit schemes, the member states quickly solved their coordination problem. The political significance of the level of deposits became soon evident during the banking crisis in Cyprus when bank accounts up to 100,000 € were exempted from contributing to the financial consolidation of the banks on grounds of the recently revised EU DGS directive. The European Commission was asked to review the directive's provisions and develop proposals for further legal amendments by 2009, if necessary.

After public consultations, expert hearings, and recommendations by the *Larosière* committee for further harmonisation and the pre-funding of deposit guarantee schemes by the financial sector (de Larosière 2009: para 134, p. 34), the Commission presented a recast-proposal in 2010 (EC 2010b). It argued that the

minimum harmonisation provided for by earlier legislation was ineffective in protecting depositors' wealth and also inconsistent with the proper functioning of the internal market (EC 2010b: 3–4). It proposed to shorten the pay-out period to 7 working days and to regulate, for the first time, the financing of these schemes to protect a larger percentage of the eligible deposits. The Commission aimed at the establishment of a bank-financed *ex ante* fund size of 1.5 % of eligible deposits. It suggested a transition period of 10 years to reach this level (Gerhardt and Lannoo 2011). Another 0.5 % should be extracted through *ex post* bank contributions. This fund would increase the banks' contributions to DGS by four or five times and lower their profits by about 2.5 % in normal times (EC 2010b: 6).

This proposal met with substantial criticism from the member states. The most controversial issues of the proposal have been the setting up an *ex ante* fund, the question of international transfers between funds and the time frame for building up the scheme. The German and the Swedish parliaments (October 2010) issued reasoned opinions under the subsidiarity control mechanism. In the UK, concern about the effects of the directive on small banks caused an initial rejection of parts of the proposal. The Dutch actors also resented the proposal because it included provisions for financial transfers from national to foreign DGS. The European Parliament supported the Commission proposals for the *ex ante* fund and for covering deposits up to 100,000 €, but voted for longer transition and payment periods.

In 2012, the European Commission raised the symbolic significance of the directive by presenting this proposal as an elementary component of a European Banking Union, that would consist of a single supervisory authority for banks, a single deposit guarantee scheme, and banking restructuring mechanisms. Hence, over time, the status of DGS moved from quick fixes to maintain consumer confidence to becoming an important stabilisation mechanism of the banking system. In the context of agreements on other aspects of the Banking Union such as the establishment of a Single Supervisory Mechanism and the Single Resolution Mechanism, the EU Council and the EP managed also to reach informal agreement on the revision of the directive in December 2013 (EC 2013). The coverage level of 100,000 € per depositor and bank remains unchanged. The target level for bank-paid *ex ante* funds has been set at 0.8 % of the covered deposits which is 0.7 percentage points below the Commission's proposal and 0.3 percentage points above the resenting member states' demand. This level must be achieved within 10 years as the Commission had proposed; the Commission can grant exemptions from that level which, however, cannot be lower than 0.5 % of covered deposits. The repayment deadline has been shortened to 7 working days from 2024. Finally, the directive passed in 2014 introduces a voluntary but not a mandatory mechanism of mutual borrowing between different national DGS.

2.3 Directive on Investor Compensation Schemes

The proposal for the revision of the 1997 Investor Compensation Scheme directive (Directive 97/9/EC) was meant to restore investor confidence in the financial system. A further rationale was the prevention of competitive distortions arising from member states imposing their own compensation requirements on third country firms. The proposal stipulated to compensate investors in case that an investment firm that held and managed the money and the financial instruments of its clients should be unable to repay or return the invested money or the financial instrument due to fraud or other administrative errors. The proposal covered also investments in funds that were regulated by the UCITS and Markets in Financial Instruments (MiFI directives; EC 2010a). In parallel to its reasoning for a revision of the DGS directive, the Commission claimed that the protection of consumers required an increase of the existing coverage level and stronger common rules concerning the funding of the schemes at national level. Investors with cross border investments should enjoy the same level of protection in all member states. This directive was not part of the immediate firefighting and discussed in a *negotiation* mode, involving all EU institutions. The main issues were how to fund the ICS and what investments to cover by the ICS (Interview European Commission, 10 May 2012). The calculation of the financial contributions should be based on the risks incurred by a firm. As in the DGS case, the Commission suggested *ex ante* funding. Each investor compensation scheme should establish a target fund level of at least 0.5 % of the value of the money and financial instruments that were held, administered or managed by the investment firms or collective investments covered by the scheme. If the amount of compensation funds should prove to be insufficient for the claims, the funds should call additional money from the financial institutions or borrow it from other schemes. In that respect, the Commission proposed a compulsory lending level of 10 % among the member states' ICS. Additionally, the Commission suggested an upper limit of 20,000 € to be imposed on the compensation coverage, which is significantly less than the 100,000 € for bank deposits.

In response, both parliamentary chambers in the UK discussed issuing a subsidiarity complaint. The British parliamentarians argued that an investment compensation scheme might undertake inappropriate, careless or risky actions, because it was relying on the fail-safe mechanism of cross-border lending. To avoid moral hazards it would be better not to have recourse to other member states' schemes, but to have each member state ensure that the members of the national compensation schemes take full responsibility themselves. Similarly, Dutch and Swedish stakeholders rejected the possibility of a mutual loan system. Furthermore, British, German, and Dutch governments claimed that national investor compensation provisions were already in place and that the proposed EU level regulation would not improve the situation. In sum, all four governments rejected the Commission proposal.

Building on the position of British MEPs, the EP (2011) was also concerned that the proposed *ex ante* target fund level of 0.5 % and the mutual loan system could trigger moral hazards. The EP underlined that each member state should maintain

the responsibility for having appropriate financing mechanisms in place. The Commission opposed the amendments suggested by the EP (EC 2011). At the time of writing, the EP and the Council have not been able to find a compromise on the Commission's proposal. The Council has not reached a common position. The member states disagree on the compensation level (ranging between 20,000 € and 50,000 €) and the majority of them reject extending the scope of the Directive to UCITS unit holders.

In sum, the three proposals were placed on the EU's agenda in response to the external shock of the global financial market crisis. Furthermore, electoral considerations and the *voting mode* proved important in the debate on the AIFM directive. But mostly, the legislative proposals were prepared by ad hoc *technocratic committee governance*, before entering the *negotiation mode* in the EU's legislative debates. Here the *executive mode* clearly played a role in the format of intergovernmental bargaining. The member states disagreement on the distributive implications of the DGS and the ICS directive proposals proved a greater obstacle to the passing of these proposals than the introduction of a new set of regulatory institutions at EU level to the hitherto little regulated alternative investment funds. However, the case studies clearly demonstrate that decisions have not been taken in the *ad hoc* executive mode alone, the European Parliament as well as national parliaments had roles to play in these debates. Finally, all three proposals aim at strengthening the *delegation mode*, introducing either new regulatory and supervisory instruments or revising established instruments.

3 The Scope of Policy Changes and Policy Framing in the Three Policy Debates

Policy analysts differ in their opinion about the amount of change induced by these reform processes. For instance, it is contested if the revisions to the AIFM Directive proposal watered the original proposal significantly down (Buckley and Howarth 2011) or if the directive may be regarded as a sea change in the regulation of the hedge fund industry (Quaglia 2011). According to the European Commission, the two most controversial policy issues—the scope of the directive and the opening of the European market to funds from third countries after obtaining a European passport—have been settled very closely to its original proposal (Interview European Commission, 9 February 2012). We are going to employ three indicators to assess the amount and direction of changes introduced by the three legislative proposals that we study.[1] First, we rely on the perceptions of the policy participants. Based on a content analysis of their position papers and policy documents, it

[1] We collected 746 documents on the three directive proposals (207 media articles and 539 position papers from different stakeholders). The majority of the statements were given in the consultation processes of the EC or the national authorities. For this article, we used a sample of 170, randomly selected, policy documents from the four countries and of the EU level actors.

Table 1 Extent of change introduced by the policy proposals

	AIFM	ICS	DGS
Routine or incremental change	25 (46.3 %)	25 (71.4 %)	29 (45.3 %)
Major change or emergent policy	29 (53.7 %)	10 (28.6 %)	35 (54.7 %)

χ^2 (2) = 7.3379, P = 0.026, N = 153

becomes evident that the policy participants find the changes included in the three directive proposals non-trivial, but disagree on their amount (Table 1). A majority of the actors who were involved in the debates on the AIFM and the DGS directives is of the opinion that these proposals constitute major policy changes or deal with entirely new policy problems. In the case of the ICS directive, this holds only for 29 % of the actors. This proposal is much more likely to introduce only incremental changes to the EU's economic governance regime than the other two proposals. Interestingly, the perceived scope of changes introduced by each proposal is not at all related to the difficulty of reaching agreement in the EU legislative process. The investor compensation scheme proposal which is perceived to display the least amount of change could not yet be passed by the EP and the EU Council. And it took much longer to pass the revised directive on DGS than the AIFM directive, which displays about the same degree of change according to the policy participants.

A second way of gauging the extent of change is to establish the cognitive maps of the actors during the policy debates. For this purpose, we study frames as arguments that emphasise a specific aspect of a policy proposal (Entman 1993). According to Daviter (2009: 1118), policy frames are about what 'actors perceive to be at stake in an issue'. A study of the policy actors' frames shall therefore indicate, if essential perspectives have changed due to the financial market crisis. Before the financial crisis, financial market regulation was primarily meant to ensure market efficiency and market integration. As Barry Eichengreen (2009: 19–20) puts it, the 'EU Financial Services Action Plan (FSAP) of 1999 established minimum standards for supervisors and regulators,' that did not prevent gaps in directives and allowed for an uneven implementation. Financial market stability and investor confidence were not high on the agenda.

Based on a content analysis, Table 2 presents the frames the actors identified in their position and policy papers, or what they perceived to be the essence of the three directive proposals. While not allowing for a strict inter-temporal comparison with previous legislative debates, the table indicates the emphases of the policy debates. It shows that framing is widespread: more than 90 % of the actors invoked at least one frame. A limited number of frames dominated the debates. Among the substantial frames, financial market stability and consumer safety predominate, whereas market functioning and competition is less emphasized. Among the procedural frames, the emphasis is on harmonization and regulation. From this evidence it can be inferred that the substantial concern of financial market regulation has shifted to consumer safety and financial market stability. In the aftermath of the global financial crisis, these two frames brought the entire set of reforms of EU

Table 2 Types of frames in the three directive proposals

	AIFM	ICS	DGS	Sum
No frame	14	3	9	26
Procedural frames				
Regulation	26	7	2	35
Harmonization	18	9	29	56
Implementation	1	1	1	3
Information and transparency	1	1	3	5
Substantial frames				
Costs and benefits	9	5	1	15
Market functioning and competition	4	14	5	23
Financial market stability	9	8	26	43
Consumer safety	6	18	37	61
Investor confidence	0	11	0	11
Employment	2	0	0	2
Sum	90	77	113	280

financial market regulation under way. As they were more important during the debates on ICS and DGS than on AIFM and as the former directive proposals were less easily agreed upon at EU level than the latter, it is safe to say that this paradigm shift in the framing of financial market regulation is in itself insufficient to account for the success (or failure) of specific legislative proposals. The political controversies concerning the three directive proposals were situated below the level of the financial market safety metaframe and focused on specific policy issues.

A third way of measuring change is to use an institutional approach by looking at modifications of the regulatory institutions. Here, continuity is more common than discontinuity. When change happens, it is more often a gradual transformation than an abrupt change, which is due to the path dependencies of institutions (Streeck and Thelen 2005: 4–9). In the case of financial market regulation, we can see the global financial crisis as either a window of opportunity for an abrupt change, or rather as a trigger for a gradual, transformative change in the sense of Streeck and Thelen. They distinguish among *layering, displacement, conversion, drift* and *exhaustion*. The first describes a gradual process where a conflicting institution is slowly replacing an old institution because the new one is favoured by decision-makers or the old one becomes more and more costly. *Displacement* means that pre-existing institutions are challenged and pushed aside by new, more salient arrangements that have a bigger lobby than the old ones. When they respond to new challenges or when there is a shift in power relations, policy-makers may redirect institutions, a process the authors call *conversion*. Here, actors change institutions on purpose. *Drift* takes place if institutions are not tended to and not kept updated. In that case, institutional arrangements will drift and be replaced. The process of *exhaustion* describes a gradual breakdown, where the whole institution is not worth being preserved since it may produce more costs than it saves.

Following this classification, we observe different degrees of institutional change across directive proposals and political levels.[2] The AIFM directive introduced several changes to the way in which hedge funds and private equity funds are treated at EU level. A previously not regulated area was subjected to a harmonized approach. In that sense, a new institutional model appeared, replacing and updating previous national laws, and setting up a multilevel regulation regime. Even though the substance of the EU directive falls somewhat short of the Commission's proposal, the directive calls into question the 'previously taken-for-granted ways' of supervising hedge funds. To qualify the extent of institutional change introduced through the AIFM directive more precisely we pay also attention to the changes it triggered in the EU member states. The reforms required in the four member states we analyse more closely are quite limited such that the AIFM directive leads to an institutional *conversion* which is a situation where formal institutions are redirected towards new goals, functions and purposes (Streeck and Thelen 2005: 26). In the cases of the DGS and ICS directive proposals, the Commission proposed revisions of EU legislation that was already in place. The problems addressed in both recast directives were meant to address the changing conditions of international financial markets to provide for consumer safety. We label these revisions a variety of deliberate but contested institutional *layering* as they modified not only the existing rules, but added also new rules such as those on the financing of these institutions that may allow a later usage of these funds in the resolution of failed banks.

4 Conclusions

The AIFM, DGS, and ICS directive proposals are part of the EU's effort to respond with a unified voice to the global financial crisis and the crisis of the Eurozone. There is a disagreement on whether they are 'gesture politics' or whether they introduce new regulatory paradigm.

As we have shown by looking at three types of changes, the new legal provisions cover a greater scope and tend to be stricter than the previous legal provisions. They are embedded in the new master frame of stabilizing financial markets and enhancing consumer safety by strengthening EU financial market supervision and regulation. In institutional terms, they are part of the gradual transformation of the EU's regime for financial market regulation that entails institutional layering and conversion. The concern that responses to the crisis are mostly delegated to technocrats is not warranted. We identified a typical reform sequence in these three cases: The establishment of an *ad hoc* technocratic committee has been followed by negotiation processes involving all legislative institutions of the EU as well as some national parliaments and buttressed by elements of the executive and the voting modes. Finally, the legislative decisions have strengthened the delegation mode in

[2] See also Salines et al. (2012), on other institutional changes in EU financial market regulation.

the EU's system of multilevel governance. Insofar, we suggest that these modes are not mutually exclusive alternatives for making decisions on policy problems that have specific characteristics. Rather than being solely determined by issue characteristics, the selection of governance modes is strongly influenced by institutional contexts. In the EU's complex system of multilevel governance, they have been used in a sequential and nested manner.

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