EU financial market regulation and stakeholder consultations

Rainer Eising, Daniel Rasch, Patrycja Rozbicka
Ruhr University Bochum, Germany
First draft, not for quotation

Paper presented at the workshop:
‘The EU as a Laboratory of Deepening Multilateralism: The Transformation of EU Governance and Its International Implications’
18-19 April 2013, Institute for European Studies, Université Libre de Bruxelles, Belgium


Abstract

The shock of the international financial crisis trigged new policies for the regulation of the financial markets in the European Union. A variety of stakeholders were consulted on how the financial markets ought to be regulated in order to restore confidence in the European Union and to boost consumer protection. We analyze the three directive proposals on Alternative Investment Fund Managers, Deposit Guarantee Schemes and Investor Compensation Schemes as case studies to study the agenda setting processes, research the actor populations, and identify the policy frames of these actors. We do so by scrutinizing the EU level and national level consultations and by using a content analysis of official documents of the political institutions as well as of the media coverage and the individual stakeholders’ position papers. The findings indicate that the frames of EU level actors and national level actors are quite homogeneous and that national actors employ a variety of different strategies to voice their interests in EU financial regulation.

Key words: financial market regulation, alternative investments funds, deposit guarantee schemes, investors compensation schemes, European Union

Word count: 10,311
Introduction

The regulation of the EU financial markets has come to the forefront of internal market policies in response to both the global financial crisis and the crisis of the Eurozone. There is wide disagreement on whether the measures taken are merely ‘gesture politics’ (Buckley/Howarth 2010) or whether they introduce alternative regulatory paradigms (see Quaglia 2011: 678). No matter of that disagreement, the financial crisis definitely brought financial regulation under public scrutiny (Woll 2012: 1). The usual list of stakeholders such as national financial ministries, financial supervisory authorities, and the EU institutions widened to include also a variety of non-state stakeholders, who actively participated in the policy-making process.

We address the following questions: Who or what brought the financial market legislative proposals on the political agenda of the EU? Who were the main stakeholders in the policy debates? Were they mostly EU level actors, or also national level actors? What were the EU level frames and issues in these legislative proposals and were they reflected in the national debates and across different stakeholders? Our goal is to shed light on EU agenda setting dynamics, on the characteristics of stakeholder participation in the EU multilevel system, and on the importance of frames and issues in EU policy-making.

This article addresses these questions using process tracing, population study, and framing analysis. The three cases of financial market regulation we look at are: Alternative Investment Fund Managers (Directive proposal COM (2009) 207), Investor Protection Scheme (Directive proposal COM (2010) 371), and Deposit Guarantee Scheme (Directive proposal COM (2010) 368). They are part of a larger research project on interest representation in the European Union (www.intereuro.eu). They are among the 20 directive proposals that received the greatest media coverage¹ in a random sample of EU directives that were proposed between 2008 and 2010. For these 20 proposals we identify the consulted actors, the most controversial issues, the frames of actors, and the processes of interest representation in the EU multilevel system. While Germany and the United Kingdom are the most studied countries with regard to the EU financial regulations (see for example: Woll 2012, Quaglia 2010, Moloney 2010), we introduce a larger comparative perspective analyzing national debates also in two smaller countries, the Netherlands and Sweden.

¹ We used the following media sources to select the proposals: Financial Times, Frankfurter Allgemeine Zeitung, Le Monde, Agence Europe, and European Voice.
The article begins by establishing how the three directive proposals arrived at the EU policy agenda. Then we show, based on analysis of the EU and national level consultations, how the population of stakeholders in those cases looked like. After that, we compare the frames present at the EU level and in the national arenas. We conclude by discussing the lessons derived from the case studies for the relation between frames and EU policy processes.

Regulation of the EU financial market: alternative investment fund managers, investor compensation scheme, and deposit guarantee schemes

The three directive proposals are part of the EU program to reform the economic governance of the financial sector as it had been put into place with the Financial Services Action Plan that was completed in 2005 and the Lamfalussy framework that has altered the procedures for EU financial legislation and regulation since 2001. These reforms were aimed at strengthening financial market integration rather than financial market supervision (Posner/Véron 2010) and established a “decentralized model of supervision” (Schammo 2012: 775). After initial firefighting of the financial crisis that started in 2007 (Begg 2009), a first set of reforms changed the institutional framework of financial market supervision and regulation. Following the recommendations of the de Larosière committee that was set up in 2008 to review EU financial market regulation (de Larosiére 2009), the European Commission (2009a, b, c) proposed to set up a new regime of supervisory and regulatory institutions. A European Systemic Risk Board 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) was put in charge of micro-prudential supervision. In essence, the ESFS transforms the previous Lamfalussy Level 3 committees into bodies with greater supervisory, rule-setting and coordinating powers while day-to-day supervision remains in the hands of member state authorities. An important argument against greater centralization 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 effectively adopted in late 2010 (Regulation (EU) No. 1095/2010).

The three directive proposals that are the focus of this paper seek to strengthen financial market stability following the global financial crisis. They extend EU regulation to the hedge
fund and private equity sectors and revise existing EU directives on investor protection and deposit guarantee schemes. The EU institutions discussed these regulatory areas well before the financial market crisis of 2007 but did not plan to take significant actions. An expert group set up by the Commission group on finding ways to improve the efficiency of the EU investment fund markets advised against the regulation of hedge funds in 2006 (Alternative Investment Expert Group 2006). Being convinced that the existing close monitoring of hedge funds by central banks and investment firms was sufficient and finding that hedge funds “have a positive effect on global capital markets” (AP 8.3.2007), in March 2007 Internal Market Commissioner McCreevy did not intend on introducing any new legislation on hedge funds. Similarly, after a review of the 1994 Directive on Deposit Schemes Guarantees in 2005 the Commission decided that no changes were necessary at that time. 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 wide gulf that existed between the regulatory systems and the financial systems of the member states did not trigger EU regulatory activities. However, it informed the subsequent legislation in an effort towards more harmonized regulatory systems.

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 (AIFM). These are defined as collective investment schemes not covered by the EU directive on Undertakings for Collective Investment in Transferable Securities (UCITS) (COM (2008) 458). They include hedge funds, but also private equity funds.² The AIFM directive was proposed in June 2009 and passed the EU legislative process in June 2011. The other two directives were proposed in 2010 and are still in the legislative debate. The Commission tabled both proposals together as a “package to boost consumer protection and confidence in financial markets” in July 2010 (Commission 2010: IP/10/018: 1). The proposal for a deposit guarantee scheme (DGS) directive was introduced to revise earlier legislation on this subject. It is meant to protect savers and to prevent bank runs in case of a bank’s bankruptcy as well as to harmonize the more than 40 national deposit protection schemes that exist in the European Union. It got stuck in the legislative process after the

² Hedge funds are frequently referred to by reference to several of the following criteria: “broad investment mandates, a focus on delivery of absolute returns, high trading volumes/turnover, a high and systematic use of different types of leverage, and an investor base mostly confined to institutional or sophisticated investors.” (Ferran 2011: 380). They tend to operate outside the standard regulatory framework that is in place for collective investments of retail investors. Private equity funds are raised “in part from the founders of the fund but mostly from experienced and sophisticated investors, such as funds of funds, pension funds, investment funds, endowments, and high net worth individuals. (Ferran 2011: 381).
European Parliament’s (EP) first reading in Feb. 2011. The proposal for the investor compensation scheme (ICS) directive aimed at revising the existing Investor Compensation Scheme (97/EC/9 from 1997) and at harmonizing the 39 existing investor compensation schemes in the EU member states. Its focus is to compensate retail investors (small investors) in those circumstances in which investment firms are not able to return money or financial instruments as a result of a significant fund failure, i.e. due to fraud or negligence at an investment firm. The investor compensation scheme directive proposal (ICS) was blocked in the legislative process after the Commission’s response to the amendments that the European Parliament proposed in July 2011. (DGS)

In the following section we address the questions why these topics reached the EU policy agenda and why the EU legislators were able to agree on the AIFM directive but not (yet) on the DGS and the ICS directives.

**Directive on Alternative Investment Fund Managers**

Several observers find it puzzling that the AIFM sector has become the subject of EU regulation. First, there were no significant international regulatory requirements for the hedge fund sector that the EU had to adopt. Secondly, the sector has not been identified as a root cause of the financial crisis. However, the de Larosière committee that reviewed the EU financial regulation system found it guilty of transmission effects ‘through massive selling of shares and short-selling transactions’ (de Larosière 2009: para. 86). In the international arena, gradually consensus emerged that hedge funds might have a systemic impact and be therefore brought under official oversight (Ferran 2011: 389). Thirdly, while there was no EU regulation of the sector in place, it was already subject to national regulation in several member states. In fact, the de Larosière committee came close to recommending UK style national regulation as best practice: In the UK, “all hedge funds managers are subject to registration and regulation,” and “the largest 30 are subject to direct information requirements … as well as to indirect monitoring via the banks and prime brokers. It would be desirable that all other member states as well as the US adopt a comparable set of measures” (de Larosière 2009: paras. 86-87). In addition, the committee recommended establishing an oversight institution that would gather relevant economic information from the industry and evaluate them.
Given the lack of international requirements and clear-cut causal effects of the sector on the financial crisis, what brought AIFM-regulation on the political agenda of the EU? Most authors point to a mix of domestic economic structures, domestic regulatory approaches, and issue characteristics even though there is disagreement on the relative importance of these factors. First, hedge funds would seem to be important financial players in the corporate governance structures of liberal market economies (LME) while they might disentangle the close relations between banks and enterprises or across enterprises that supposedly prevail in coordinated market economies (CME; see Hall/Soskice 2001, Vitols 2001). Hence LMEs like the United Kingdom where more than 80 per cent of the European hedge fund industry is located would generally support the industry’s position while CMEs like Germany or the Netherlands or countries with a ‘state capitalism’, even if transformed, like France (Schmidt 2002: 5), would suggest tighter control of the hedge fund sector and perhaps support established financial institutions in order to prevent major disruptions of the established finance-enterprises nexus. Second, hedge funds are an arena in which tried and tested regulatory approaches of the EU member states collide. Countries with a ‘market-shaping’ approach that aim at financial stability and consumer protection by means of rule based regulation with a strong role for public actors like France or Germany have argued for a stricter regulation of the hedge fund industry well before the financial crisis. In contrast, ‘market-making’ countries that aim more at financial market innovation, emphasize competition in financial markets, and rely greatly on the industry’s self-regulation like the UK and also the US would oppose such efforts (see Quaglia 2011: 669). Thirdly, 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 were crucial in placing this issue on the EU’s political agenda (Quaglia 2011: 670-1). The regulation of hedge fund was a salient issue among the national publics in Germany and, even more so, in France. 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 all three respects – the pursuit of domestic economic interests, established regulatory ideas and politics against symbols – the financial crisis was a window of opportunity for the French and German governmental actors. They flagged the idea of stricter hedge fund regulation in both international fora like the G20 and in the European Union. Given the Franco-German tandem’s pressure and two critical reports in the European Parliament on hedge funds and institutional investors (European Parliament 2008a, b), the Commission reversed its initially reluctant position to regulate the sector and put forward a
Directive proposal. The Directive subjects 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.

The proposal on the AIFM directive was also a highly salient topic in the United Kingdom because of its potential impact on the British financial sector. 80% of the Hedge Funds in Europe are based in London (see for example: Schirm, 2011). While top-level political support in Germany was important for placing the issue on the EU policy agenda, none-state stakeholders were more involved in the question of how to implement the directive. In the Netherlands and Sweden, the proposal was not widely discussed; no matter of the important role the Swedish presidency of the EU Council played in working-out a compromise proposal at the EU level. There were few exchanges between the Dutch parliament and government, mostly circulating around the clarification of terms and concepts from the Dutch response to the Commission’s proposal. In the Netherlands, the debate focused also on the inclusion or exclusion of venture capital.

The Spanish and the Swedish Presidencies of the EU Council brought several revisions to the directive proposal under way that allowed for a compromise of the member states. The compromise was mostly negotiated between France and Germany, which were critical of hedge funds and blamed them for the proliferation of the financial market meltdown, on the one hand, and a coalition of countries led by the UK which argued that stricter regulation would drive financial companies out of Europe (McDermott 2009). While the compromise solution established minimal standards for all member states, both France and Germany proposed harsher requirements in their national regulations shortly before and after the directive publication. For example, the German Ministry of Finance (BMF) proposed in Jul. 2012 a Draft Bill on implementation of the AIFM Directive which introduced the German Investment Code (Kapitalanlagegesetzbuch). The proposed code went beyond the AIFM and extended the AIFM requirements also to small funds, which the AIFM directive obliged only to register and report. It is contested if the revisions to the Directive proposal watered the original proposal significantly down (Bucklay/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 most important 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, 09.02.2012).

**Directive on Deposit Guarantee Schemes**

After reviewing the 1994 Directive on Deposit Guarantee Schemes in 2005, the European Commission arrived at the conclusion that no further actions were necessary. The financial crisis triggered a further review and a proposal for legislative amendments in 2008. In 2009 the EU Council and the European Parliament passed Directive 2009/14/EC. This directive raised the previous coverage level from €20,000 to €50,000 and eventually to €100,000 from 31.12.2010 onwards. It reduced the payout delay from between three and nine months to a maximum of 35 working days. The directive also ended the co-insurance system according to which savers would have to bear a 10% loss of their deposit guarantees. The Commission was requested to present a report on the effectiveness of these provisions and present, if necessary, proposals for amending the Directive.

Why did this topic reach the EU’s political agenda and was decided so quickly? The first revision of the Deposit Guarantee Schemes Directive was part of the immediate fire-fighting against the financial crisis and meant to restore confidence in the banking sector. The bankruptcy of a number of banks during the financial crisis (for example: Icesave in Iceland, or Northern Rock in UK) and the varied national responses to the question of how to secure the liquidity of national financial systems put national deposit schemes into focus. The fact that banks’ level of liquidity rushed down during the crisis indicated that established levels of deposit insurance schemes might not be sufficient and that savers needed additional reassurance. As Internal Market Commissioner Charlie McCreevy put it: “I am concerned about the possibility of having to witness once again pictures of citizens queuing at their banks the next time they hear that the bank is in trouble” (Agence Europe 17.12.2008).

Moreover, the member states were concerned about capital flights and had an interest in limiting state liabilities with regard to national guarantee schemes. A chorus of announcements by politicians was meant to reassure savers in France, Italy, and Belgium. Ireland decided to guarantee savings deposits as well as a wide range of liabilities held by the country’s six biggest banks, Germany, Austria, Denmark, Sweden, Greece and Spain took similar steps (European Voice 7.10.2008, 15.10.2008). The United Kingdom increased its minimum deposit guarantee (from £35,000 to £50,000) and complained that UK savers were “inundating Irish banks with queries about savings accounts” (European Voice 9.10.2008). Accordingly the member states quickly agreed on a directive that raised the level of
guarantees to cover about 95 per cent of the bank account savings of natural persons and provided for a minimum harmonization, explicitly allowing the member states to maintain their national protection schemes and moving beyond the EU requirements. The 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 of the de Larosière committee for further harmonization, the Commission presented a recast-proposal (COM [2010] 368) for the DGS directive which moved beyond quick fixes and aimed at a significantly greater harmonization than the 2010 directive of the national deposit protection schemes. The Commission argued that the minimum harmonization provided for by earlier legislation was an “ineffective as way of protecting depositors’ wealth” and also inconsistent with the proper functioning of the internal market. The more specific economic aim was to enable DGS to cope with medium-sized bank failures (Commission 2010: 3-4). The Commission proposed to maintain the fixed coverage level of 100,000 € that had been set in the 2010 directive, to further shorten the reimbursement period to seven days, and to amend the funding mechanisms of existing protection schemes. While the previous directives had not directly addressed the funding of DGS, the recast proposal suggested to regulate the financing of these schemes because, according to the Commission’s Joint Research Centre (JRC 2008), the coverage ratios of the DGS in most countries were not even sufficient to protect even 1% of the eligible deposits. They range from 0.001 per cent in the United Kingdom to 1.44 per cent in Sweden. The Commission aimed at an ex ante fund size of 1.5% of eligible deposits amounting to approximately € 150 bio. and suggested a transition period of ten years to reach this level (Gerhardt/Lannoo 2011).3 Another 0.5% could be extracted through ex post bank contributions. According to the Commission, the proposal would increase the banks’ contributions to DGS by four or five times and lower their profits by about 2.5% in normal times (Commission 2010: 6).

This proposal met with substantial criticism from member state authorities and parliaments. It elicited 11 reasoned opinions from national parliaments. Only two other Commission initiatives in 2010 received more opinions. (Commission 2011: Annex 2). The German and the Swedish parliaments (Oct. 2010) issued reasoned opinions under the subsidiarity control mechanism (EP 2012). In the UK, disagreement on the effects of the directive on the small banks caused a re-examination of the proposal by the UK Financial Services Authority and

---

3 According to the Commission, there was a total of €23 billion ex ante and ex-post funds in 2008 (Commission 2010: 5)
the initial rejection of parts of the proposal. The Dutch debate on deposit guarantee schemes started prior to the Commission’s proposal and was prompted by the collapse of Icesave, an online branch of the Icelandic bank - Landsbanki. Although the bank provided services both in the Netherlands (since May 2008) and the UK (since October 2006), its bankruptcy defined only the Dutch debate. Emphasis was on the guarantee schemes for non-Dutch banks operating in the country and the bail out of Icesave’s customers in the Netherlands.

The most controversial issue of the proposal has been the level of deposits that are to be covered and the setting up an ex ante fund. Belgium, Spain, Finland, Portugal, and Romania as well as the European Parliament supported the Commission’s proposal that 1.5% of all bank deposits of natural persons and enterprises should be covered (Agence Europe 18.06.2011). Sweden claimed that even 1.5% were insufficient. In contrast, France, Germany, and the UK all rejected this threshold as being far too high and found that a fund that should cover only 0.5% of bank deposits. In Germany, the proposal was not only debated as introducing a “transfer union” through the back door by which German savers and banks would guarantee for the safety of bank accounts in Southern Europe (Handelsblatt 6.6.2012). Germany also insisted on the continuance of mutual deposit guarantee schemes as they were in place for German Sparkassen and Co-Operative Banks as well as of voluntary deposit guarantee schemes as they were in place for German private banks in the BdB (Bundesverband deutscher Banken). While the institutional guarantees of the savings banks met the approval of the European Parliament in its first reading, the voluntary schemes met the criticism of the European Commission because they cannot be legally enforced. Further negotiations among the Council members led to a consensus among the large majority of the member states that the size of the fund should amount to 1% of the covered deposits (of 100,000€ per saver). (Zeit online 1.3.2012, Agence Europe 21.6.2011). In its first reading, the European Parliament stuck to a fund size of 1.5% but only for deposits up to 100,000€ as these were already guaranteed by the DGS directive in place. The transition period for the build-up of the fund was lengthened to fifteen years from the initial Commission proposal of 10 years. The payment period should be shortened to 20 working days rather than to seven days as had been proposed by the Commission.

---

4 As a consequence of their financial obligations during the financial crisis, these reduced the minimum deposit insurance of bank customers from 30% of their liable capital to 8.75% of their liable capital in 2011. In other words, the guaranteed deposits per customer dropped, on average, from € 1.5 mio. to € 437,500. Regularly, the members pay 0.06% of their equity into the fund.
In 2012, the Commission raised the symbolic significance of an agreement on the DGS directive by presenting this proposal as an elementary component of a European Banking Union, consisting of a single supervisory authority for banks, a single deposit guarantee scheme, and banking restructuring mechanisms. The Banking Union, in turn, was portrayed as a crucial condition for allowing direct payments to banks under the European Stability Mechanism (Agence Europe 23.8.2012). Hence, over time, the status of DGS moved from quick fixes to maintain investor confidence to becoming an elementary stabilization mechanism. While crucial aspects of the banking supervisory system and the limitation of direct regulatory powers of the EU to about 200 very large banks have been agreed upon by the Council of Economic and Finance Ministers in December 2012, the deposit guarantee scheme directive and the cross-national burden-sharing involved in it has been placed on the agenda of the European Council in June 2013 (Zeit online 13.12.2012).

**Directive on Investor Compensation Schemes**

Following the financial crisis, there had been increased calls for steps to be taken to restore investor confidence in the system and to revise the 1997 ICS directive (Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes). Concerns were raised over the safety of investments, the funding of schemes and the delays in receiving compensation (European Commission, COM (2010)371 final). However, even though there is little evidence that investors demanded greater compensation due to the financial crisis an amendment of the 1997 directive was generally felt necessary. A further rationale for the ICS proposal was the potential for competitive distortions arising from member states imposing their own compensation requirements on third country firms. As mentioned above, there were no less than 39 investor compensation schemes in place in the 27 EU member states.

The proposal for the Investor Compensation Scheme directive has been presented as part of the European Commission’s package to boost consumer protection and confidence in financial services. According to the Commission, the protection of consumers required an increase of the coverage level and stronger common rules concerning the funding of the schemes at national level. Moreover, it suggested that investors with cross border investments should enjoy the same level of protection in all member states. The contributions to the schemes should function as a mutual compensation mechanism. The Commission proposed a compulsory lending level of 10% amongst the member states. A risk based approach should be applied consistently to fund the schemes in that the calculation of contributions should be
based on the potential compensation risk incurred by a firm. The directive shall 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 in the investment firm. The Commission proposed to compensate investments up to € 20,000 which is significantly less than the € 100,000 for bank deposits in the case of the DGS. The main issues were how to fund the ICS and what investments to cover by the ICS (Interview Commission, 10. May 2012). The Commission discussed if the schemes should be based on mandatory *ex ante* or *ex post* funding. It suggested to first do *ex ante* funding and if the amount of compensation is not sufficient with the claims, the funds shall call additional money or borrow it from other schemes. Additionally, they discussed whether national schemes should be allowed to borrow from each other, and whether an upper limit should be imposed on the compensation coverage. The Commission proposed that member states shall ensure that 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.

In response, both the House of Commons and the House of Lords in the UK discussed issuing a subsidiarity complaint because of moral hazards that might result from the proposal’s provisions. The British parliamentarians argued that an investment compensation scheme might undertake inappropriate, careless or risky actions because it was relying on a fail-safe mechanism. To avoid introducing a moral hazard incentive 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. As the British Government pointed out, the existing Financial Services Compensation Scheme (FSCS) in the UK was stricter than the proposed changes in the directive. Similarly, the German and the Dutch actors claimed that national provisions were already in place and that the proposed EU level regulation would not improve the situation or guarantee the future stability of the financial market. Dutch stakeholders also rejected that the proposal extended the protection of investors to custodians and depositories, as well as the proposed method of financing by a mutual loan system. In particular, the Dutch government was afraid of becoming the victim of invalid claims from other EU countries. Accordingly, both the German and the Dutch governments opposed the bulk of the Commission’s policy proposals. While the Commission proposal passed the subsidiarity principle assessment by the Dutch government, it did fail so with regard to the proportionality principle. Swedish authorities
were in favor of strengthening investors’ protection and saw the potential in the Commission’s proposal to improve the functioning of the single market for investment services. However, the Swedish government was also negative about the proposed loan mechanism and the lending facilities between the member states’ investor compensation funds. Swedish actors also argued that the relationship and proportion between the investor compensation scheme and the deposit guarantee scheme had to be adjusted in new document. In sum, all four governments rejected the Commission proposal.

The European Parliament (EP April 2011) was also critical of the Commission’s proposal and focused on how to ensure sound finances of ICS. It highlighted two issues: first, the question if the mutual loan system proposed by the Commission would not trigger moral hazards, and, second, if the level of the proposed ex ante target fund level of 0.5% was adequate. The EP placed the first issue on its agenda due to the intervention of the UK Financial Services Authority that was supported by the UK MEPs. The proposed borrowing mechanism was recognized as a useful tool, however, the EP underlined that member states should maintain the responsibility for having appropriate financing mechanisms in place. It suggested that only 5% of a scheme’s funds should be available for a compulsory lending mechanism. On the second issue, the EP suggested that the ex-ante funds should be put in place up to a target fund level of only 0.3% in all member states but within five years instead of ten years. According to the EP, the level of funding, the contributions, should be reduced to a justifiable level. Furthermore, the EP rejected broadening the scope of the directive to cover UCITS arguing that UCITS and MiFI Directives covered the topic sufficiently. The EP favored also full harmonization of investor compensation at a level of € 100,000 rather than the minimum standardization at the level of € 20,000 that had been proposed by the Commission.

The Commission opposed the EP amendments, arguing that it did not intend to present an amended proposal in the near future and would continue the dialogue in view of an early second reading agreement (Commission, 08.09.2011). Until today, the EP and the Council have not been able to find a compromise on the Commission’s proposal. The EP maintained its position on a maximum level of compensation (€100.000) and on excluding the UCITS unit holders from the ICS scope. The Council has not reached a common position. The member states disagree on the compensation level (ranging between € 20.000 and € 50.000).

---

UCITS: Undertakings for Collective Investment in Transferable Securities is collective investments, where different investors share the risks and the costs to benefit from the economies of scale. There are two directives, UCITS directive and MiFI directive, both regulating the existence and requirements of these collective investments, one for the European Market (UCITS D) one with third countries (MiFID).
The majority of member states also reject the extending the scope of the Directive to UCITS unit holders.

Media coverage and stakeholder involvement in the three proposals

**Media coverage of the three directive proposals**

The coverage of the three proposals in the media may be considered as an indicator for the salience of the debates in the national political arenas (Graph 1). The media analysis indicates that the public salience of the three proposals varies. The AIFM proposal attracted the greatest attention of all three proposals, while there is almost no coverage of the ICS proposal. However, it is important to bear in mind cross-country variations. The cross-national comparison indicates that the British press is responsible for the largest part of the AIFM coverage, while the Swedish, German, and Dutch newspapers pay fairly equal attention to the ICS and DGS proposals. Given the economic importance of the hedge fund industry in UK, it is not surprising that it attracted the greatest media attention there.

**Graph 1: The number of articles on the AIFM, DGS, and ICS in national newspapers.**

Note: The articles were retrieved from: DE - Süddeutsche Zeitung, Frankfurter Allgemeine Zeitung, NL - Volkskrant, NRC Handelsblad; SE - Dagens Nyheter, Svenska Dagbladet, UK - The Guardian, Daily Telegraph.

**Stakeholder involvement**

The European Union has developed explicit consultation regimes to strengthen stakeholder involvement in the formulation of EU policies, and the member states have also specific consultation routines. At the EU level, the European Commission organized at least one
public consultation on each proposal. For AIFM, it set up two consultations on policy formulation, and further consultations addressed the implementation of the reform. For both DGS and ICS, one consultation was organized.

At the national level, the German and British parliaments organized hearings with invited experts and interest groups on AIFM directive proposal. In both countries, the hearings were invite-only. In the Netherlands and Sweden the preferred method of consultation were expert group. The Dutch Minister of Economic Affairs met with the Social and Economic Council (SER), and the Swedish Minister of Finance formed a reference group including the Swedish Private Equity and Venture Capital Association, the Swedish Financial Supervisory Authority, and the Swedish Investment Found Association. In the Netherlands, the proposal was also submitted to online, open consultations on the directive’s implementation (August and October 2011).

In all countries but Sweden, the consultations on the DGS were held by the national parliaments (Germany April 2009, the Netherlands Jan.-Feb. 2010 and November-January 2011-2012, UK January and November 2011). The national financial ministries organized special consultation groups. The German Federal Ministry of Finance approached stakeholders through mail exchange, the Dutch and Swedish Ministries of Finance created discussion-working groups in November 2008 and November 2009. The Netherlands also organized online, publicly open consultations (August and September 2011).

The ICS case differs from the other directive proposals. In none of the four countries, public consultations took place. In Germany, the Netherlands, and the United Kingdom parts of the proposal were debated during the consultations on the DGS. However, there is no evidence of meetings focused specifically on the topic of investor compensations. In Sweden, the Ministry of Finance established a reference group in August 2008 that focused on the topic. However, there is no further record of any stakeholders’ consultations.

704 unique actors participated in these consultations or were mentioned in the media as actors involved in these proposals (excluding the EU institutional actors). The number of involved actors differs significantly across the legislative proposals (Graph 2). 63% of the 704 actors were visible in the consultations on the AIFM directive (449 actors), which attracted considerably more attention than the other two proposals. The most visible categories of actors are interest groups, companies, governmental actors, and public agencies. However, the types of actors involved in the different proposals vary to some extent. Interest groups were
the most active type of actor on DGS and ICS, while companies were the most active type on the AIFM directive.

**Graph 2: The Types of Actors involved in the Formulation of the AIFM, DGS and ICS Directives**

Note: Details of the categories: Interest organization (including NGOs, umbrella organizations, unions, business associations), think-thank (including research groups, expert groups, consultancies, law firms), company/firm (including banks, enterprises, hedge funds), institution (example: hospital, university, charities), court, politician (including prime ministers, presidents), political party, parliamentary actor (including single parliamentarians, parliament committees, parliamentary chambers and working groups), governmental actor (including individual ministries, governmental commissions, committees), public agency, regional authority (for example Länder in Germany), international organization (examples: International Monetary Fund, World Health Organization).

Four fifths of the actors have been involved in just one EU legislative proposal. 13% of the actors have been lobbying on two proposals and only 6% have been vocal on all three proposals, pointing to a very high degree of specialization in the financial sector and a high segmentation of its regulatory areas (Graph 3). Mostly national governmental actors and public authorities like the Dutch Ministry of Finance, or the Swedish Ministry of Local Government and Financial Matters were in a position to take into account cross-sectoral implications of the proposals and voiced their opinion with regard to all three directives. Only a few interest groups and companies were active on all three directives. The majority of those were European associations like the European Association of Co-operative Banks or the European Banking Federation. However, some British and German stakeholders were also vocal on more than one proposal. Important examples are the Association of British Insurers, the British Bankers Association, the Association of German Banks, and the Federal Association of Investment and Asset Management. The actors that were involved in two directives tended to focus on the AIFM and the DGS directives.
How centralized are the policy consultation in EU financial market regulation? Different theories of European integration provide different suggestions: Neofunctionalism posits that national actors tend to move into the European arena. One might indeed expect that actors prioritized the EU level given the central role that is attributed to the European Commission in EU policy-making and given that the invitation to participate in EU level consultations does not discriminate according to an actor’s country of origin. In contrast, intergovernmentalism suggests that national actors remain focused on their national governments who act as gatekeepers to the EU level. And, finally, multilevel governance argues that national actors may be active at both the national and the EU level (see Eising 2004). To analyze this question, we focus on the national stakeholders from the four studied countries (Graph 4). This analysis indicates that most national actors are vocal at just one level of government (European or national), only a minority is active at both the EU level and the national level. To most national actors, the national level is still crucial when it comes to exerting influence on EU politics. In the AIFM case, 50% of the actors were only active at the national level. This applies to 75% of the actors in the DGS case and 56% of the actors in the ICS case. Only in the ICS case a large share of the national actors (64%) focused exclusively on the EU level arena. However, this applies only to 16% of the actors involved in the DGS proposal and 30% of the actors involved in the AIFM proposal suggesting that the pattern in the ICS case might be due to its rather low level of political mobilization. Only a small minority of actors pursue multilevel strategies: 19% of the actors in the AIFM case, 8% of the actors in the DGS case and none of the actors in the ICS case. The actors who were vocal at both the EU and the national levels are interest groups. Several of them are national umbrella organizations, like
the Federal Association of Investment and Asset Management or the Swedish Bankers Association and companies which although based in a particular country are known for their international portfolio (examples: ING Bank, Nordea, or Bank of New York Mellon).

In sum, the salience of the three proposals varies significantly, and so does the involvement of national stakeholders. It is interesting to note that the policy proposal that received the greatest media and stakeholder attention could be passed by the EU institutions in a rather short span of time while the two proposals that were less visible were more controversial in the EU legislative process. The distributive implications for the member states’ financial sectors of the ICS and the DGS proposals seem to have stirred greater controversy than the regulatory aspects of the AIFM proposal.

Framing EU financial market regulation

In this section we analyze how different actors framed EU financial market regulation. For our purposes, we define a frame as an argument that emphasizes a specific aspect of a policy proposal in a public policy debate (Entman 1993; Baumgartner, Klüver, Mahoney 2012). Frame analysis highlights the ways in which political issues are presented (Price and Tewksbury, 1997:184) and seeks to find out if these (re)presentations make a difference to policy outcomes. We identify frames by means of a content analysis of the arguments that different stakeholders employed in their position papers and public statements. We collected

![Graph 4 The Presence of National Stakeholders in the EU and National Consultations](image-url)
746 documents on the three directive proposals, out of which 207 are media articles and 539 position papers from different stakeholders. The majority of the statements were given in the consultation processes of the European Commission or the national authorities. For this article, we used a sub-sample of 170 policy documents\(^6\) from the four countries and EU level actors.

What are the EU level frames in these legislative proposals and are they reflected in the national debates as well as across different stakeholders? The analysis of the documents submitted to the consultations and the investigation of the national media coverage gives a broad overview of the frames informing the policy debates on the three directives (Table 1). All three policy debates were rooted in an encompassing EU-level master frame that presented the Commission proposals as important means to achieve financial market stability and contribute to the security of the Single European Market. In conjunction with the financial market crisis, this master frame brought the entire set of reforms of EU financial market regulation under way. The main frames in the four EU member states are consistent with the EU level frames and also across different countries pointing to the homogeneity of the three policy debates. The political controversies concerning the three directive proposals were situated below the level of frames and focused on specific policy issues.

The European Commission introduced the AIFM proposal as a directive that would shield consumers and institutional investors from high risks and contribute to the stability of the financial system. The national debates varied this theme. In fact, the most often used frame was a need for increasing the stability of the financial system. In the UK and Sweden, a focus on the competitiveness of the hedge fund industry followed as a second major frame. The British and Swedish stakeholders debated tailoring the directive to respecting the differences between the types of funds it would cover. In Germany, the debate focused generally on a stronger or weaker regulation and supervision of financial services. The topic was especially discussed by the financial services industry, which argued that stricter regulation was not necessarily the best practice for gaining stability, as hedge funds were not single-handedly responsible for financial crisis. In the United Kingdom, an additional frame focused on sustaining the competitiveness of the UK and EU financial markets in a global perspective.

\(^6\) We have analyzed the Commission proposals (x3), the text of the AIFM directive, the EP amendments and the Commission response on the ICS and DGS proposals, 30 randomly selected position papers from the interest organizations from the EU level consultations (10 for each of the proposals), national government position papers on the proposals (3 proposals x 4 governmental positions), 120 randomly selected position papers from the interest organizations from the national level consultations (3 proposals x 4 countries x 10 interest groups position papers).
The argument was that unless the future directive was fully compatible with the global approach to the regulation of fund managers, its implementation could seriously damage the EU and UK economies. Only after it had become clear that this frame would not prevent the introduction of European hedge fund regulation, the British debate shifted more narrowly to the tools that the directive would provide for supervisory authorities to shape the substance of the directive. In all four countries the necessity of directive was then agreed upon, and its timely delivery was of the largest interest in the Netherlands.

Similarly, the national frames with regard to the DGS proposal resonated with the Commission’s proposal. The Commission’s main frame was to improve of the protection of depositors, through reliable funding of the deposit guarantee schemes. Variations of this frame were present in the Netherlands emphasizing that the confidence of clients in the system should be sustained, Sweden highlighting the protection of consumers and savers, and the UK debating a secure environment for financial transactions, which should lead to the protection of depositors and ensure ongoing depositor confidence. Generally, the most frequently used frame in DGS was to “boost the confidence of consumers”.

The EU level debate on the ICS directive concentrated on strengthening the confidence of investors in the EU market through a better protection of their investments. This frame figured prominently in Germany (strengthening investors’ rights), Sweden (establishment of a fund to protect investors), and the UK (security of investors in economically difficult times). In Germany, the consumer organizations agreed that strengthening investors’ rights was tantamount. The lack of a European level financial market regulation was considered to have been part of an incentive structure that had led banks to make risky investments and had caused deposit losses some of which were poorly compensated. The “protection of consumers and investors”-frame was used in all four countries.

In Germany, due to the regulation of depositors and investors schemes in a single national law (Einlagensicherungs- und Anlegerentschädigungsgesetz from 1998, amended in 2010), the frames for the DGS and ICS directive proposals were collapsed and focused on strengthening investors’ rights. In both cases, ICS and DGS, German actors (especially banks and financial services associations) used the frame “independence of national financial markets” as well, effectively refusing EU level regulation of deposit guarantee schemes and investor compensation schemes. Their argument was that the national law was already stricter than the changes proposed by the directive proposals. The same argument was important in the UK,
where the House of Commons stated that EU legislation would not trigger substantial legal changes.
<table>
<thead>
<tr>
<th>COM</th>
<th>DE</th>
<th>NL</th>
<th>SE</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Frames</strong></td>
<td>Shielding consumers and institutional investors from high risk&lt;br&gt;Ensuring the stability of the financial system</td>
<td>Shielding consumers and investors from high risk</td>
<td>Stability of financial market</td>
<td>All investment funds shall be treated in a unified manner to avoid distortion of competition&lt;br&gt;Increased stability of the financial system&lt;br&gt;Empowerment of supervisory authorities to better manage market risks&lt;br&gt;Competitiveness of the EU and UK markets in global perspective</td>
</tr>
<tr>
<td><strong>Issues</strong></td>
<td>Regulation of specific types of funds (should all business models be subject to regulation?)&lt;br&gt;Oversight of third party (Will the regime be open to all third parties, non-EU domiciled, through a passport system?)&lt;br&gt;Strong or weak role for depositories</td>
<td>Stronger or weaker regulation of supervision of financial services</td>
<td>Speed-up of the process - the directive was necessary as soon as possible&lt;br&gt;Inclusion of monitoring venture capital</td>
<td>Regulation of specific types of funds (should all business models be subject to regulation?)&lt;br&gt;Protection of consumers and savers</td>
</tr>
<tr>
<td><strong>Alternative investment funds (AIFM)</strong></td>
<td><strong>Deposit guarantee schemes (DGS)</strong></td>
<td><strong>Investor compensation schemes (ICS)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frames</td>
<td>Issues</td>
<td>Frames</td>
<td>Issues</td>
<td>Frames</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>COM</td>
<td>Regulation of specific types of funds (should all business models be subject to regulation?)&lt;br&gt;Oversight of third party (Will the regime be open to all third parties, non-EU domiciled, through a passport system?)&lt;br&gt;Strong or weak role for depositories</td>
<td>Improvement of depositors' protection, through reliable funding of the schemes&lt;br&gt;Boost consumer protection and confidence</td>
<td>The level of ex ante funding for depositor guarantee schemes: 0.5% of eligible deposits Vs 1.5% of eligible deposits&lt;br&gt;Payout deadline for depositors, following a banking collapse or comparable circumstance: One week Vs The SQ of 20 working days (four weeks)</td>
<td>Financial stability of the Single Market&lt;br&gt;Strengthening of investor confidence in the EU market&lt;br&gt;Protection of investors&lt;br&gt;Feasibility of implementation&lt;br&gt;How to fund schemes (mandatory ex ante or ex post funding)?&lt;br&gt;Whether national schemes should be allowed to borrow from each other?&lt;br&gt;Compensation limit: whether an upper limit should be imposed on coverage?</td>
</tr>
<tr>
<td>DE</td>
<td>Stronger or weaker regulation of supervision of financial services</td>
<td>Strengthening investor’s rights&lt;br&gt;Independence of national Financial Sector</td>
<td>EU regulation versus national established protection of investors</td>
<td>Independence of national Financial Sector&lt;br&gt;Strengthening investor’s rights</td>
</tr>
<tr>
<td>NL</td>
<td></td>
<td>Sustaining confidence of the client in the system</td>
<td>Bailout of Icesave&lt;br&gt;Candidature of Iceland to the EU&lt;br&gt;The level of obligatory deposit applicable to smaller banks&lt;br&gt;The guarantees for banks which are not under control of national governments</td>
<td>Feasibility of implementation&lt;br&gt;Protection of custodians of funds or depositaries?&lt;br&gt;Mutual cross country loan system.</td>
</tr>
<tr>
<td>SE</td>
<td>Protection of consumers and savers</td>
<td>Changes to coverage level</td>
<td>Feasibility of implementation&lt;br&gt;Protection of investors</td>
<td>Increase of compensation from €20,000 to €50,000&lt;br&gt;Establishment of a fund for investor protection&lt;br&gt;Adjustment of relationship and proportion between investor compensation and deposit scheme</td>
</tr>
<tr>
<td>UK</td>
<td>Regulation of specific types of funds (the directive should be tailored in a way that respects the differences between the types of funds it covers)&lt;br&gt;Tools provided for supervisory authorities</td>
<td>More secure environment for financial transactions&lt;br&gt;Ensure ongoing depositor confidence</td>
<td>Changes to coverage level&lt;br&gt;Small banks protection</td>
<td>Security of investors</td>
</tr>
</tbody>
</table>

Source: Based on interviews with the European Commission and documents analysis of national stakeholder.
Conclusion

The AIFM, DGS, and ICS directive proposals are part of the EU 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. And yet, it is possible to categorize them as examples of reforms that are embedded in the master frame of stabilizing financial markets by strengthening EU financial market supervision and regulation. The AIFM directive extended EU level regulation to the hedge fund sector in June 2011. The DGS directive proposal moved beyond the quick fixes that were originally introduced by its 2010 predecessor and is aiming at a significantly greater harmonization than its predecessors. The ICS directive proposal also revises earlier EU regulation and aims at a significant harmonization of the individual member states’ compensation requirements.

Why did the EU (so far) only pass the AIFM directive? The common master frame of financial market stabilization and regulation cannot account for this difference to the other two directive proposals. Our analysis suggests that the (re-)distributive implications of the DGS and the ICS proposals, involving the setting up of ex ante funds, the institutionalization of mutual loan mechanisms, and, more generally, potentially enabling cross-national monetary transfers proved a greater obstacle to an agreement of the member states and the European Parliament than the extension of EU supervisory and regulatory powers to an hitherto little regulated financial sub-sector. It is interesting to note that neither the salience of the three policy proposals nor the extent of political mobilization on each directive proposal account for the different outcomes.

Policy-making was not centralized at the EU level. The exchanges between stakeholders took place both at the EU and at the national level. However, most stakeholders voiced their interest at just one level, either the EU level or the national level. Most national actors remain focused on the domestic level. There were only few multi-level players among the active stakeholders. Interest groups, companies, and national authorities were the most important stakeholders. The large involvement of companies (mostly banks and hedge funds) is a unique characteristic of these three proposals in comparison to other proposals that were put on the EU agenda between 2008 and 2010. Only a small number of stakeholders took part in the debates on more than one proposal. Those focused mainly on the AIFM and DGS proposals.
With regard to the three proposals, the EU level frames were picked up and adjusted at the national level. The majority of national frames were consistent with the EU level frames proposed by the Commission. National frames resonated also across the national borders. Thus, we conclude that the debates, both at the EU and national levels, were mainly homogeneous. Exceptions to this pattern can be traced to specific national circumstances. The UK frame, in AIFM, on sustaining competitiveness of the UK and EU financial markets can be attributed to the large size and the international outlook of the UK’s financial market. The German frames on DGS and ICS were collapsed into one due to the preexisting national regulation that covered both subjects. It is important to note that the homogeneity of frames between levels and across countries did not prevent major controversies on different issues. While the frames of financial market stabilization and consumer protection, in conjunction with the international financial crisis and the Eurocrisis, prompted and enabled EU policy-makers to take action in the three areas that we analyzed, the more detailed policy debates, have, at least in part, escaped the grip of these frames.

Further studies are needed to check if the degree of fit among EU legislation and national pre-existing laws has an effect on a) the development of national frames and b) on the population of actors, meaning if new directives trigger only small changes in national legislation then fewer stakeholders get involved. Further on, framing studies should scrutinize the effects of frames on policy issues and policy processes. Since the policy process has not been closed for the ICS and the DGS, it is not yet fully visible, in what ways these frames had an effect, for example if the usage of the same frames by the majority of the stakeholders accelerates the policy process or if highly varied frames slow down the process.
References:

— Agence Europe (18.06.2011) Greece, Stability Pact, Stress Tests and Derivatives on Agenda.
— AP (08.03.2007) McCreevy says additional Hedge Fund regulation not needed for Global Markets.
— European Voice (7.10.2008) EU increases deposit guarantees, by Rikard Jozwiak.
— Gerhardt, Maria & Lannoo, Karel (2011) Options for reforming deposit protection schemes in the EU, European Credit Research Centre, ECRI Policy Brief No.4 (March 2012).
— Handelsblatt (06.06.2012) EU-Einlagensicherung. Deutsches Geld für spanische Sparer.
— Zeit online (01.03.2012) Verschleppungstaktik, by Claas Tatje.