Since the 1970s, a growing number of actors have been involved in the shaping of the global financial architecture alongside state organs and intergovernmental groups like the G10. **Transnational networks have gradually emerged, challenging the traditional norm-making monopoly of states both at the international and national level**. Nowadays, they are firmly embedded in the process of regulating international finance. Transnational networks do not have an international legal personality, nor do they adopt legally binding instruments. Instead, they follow a common approach to international financial regulation: they develop soft law standards, promoting their implementation also in countries not directly involved in their formulation. Participants in the standard-setting process show considerable diversity. In most cases, they are senior officials from national regulatory authorities and central banks, not members of the executive, diplomats or elected representatives. **Networks of national regulatory and supervisory authorities and central banks enjoy a significant degree of autonomy from the direction of governments**. Their independence, which domestically is often protected by law, translates into an even higher degree of insulation from the remit of politics in the transnational context. **The independence of networks derives from the complex and technical nature of financial market regulation and is considered both instrumental to the efficient performance of their mandate and necessary to prevent political opportunism**. Discussions take place outside the scrutiny of domestic politics, within an epistemic community of highly specialized professionals who share a similar educational background, a common set of principled beliefs and practical know-how. **This narrative – technocracy as a legitimizing factor – has been strongly criticized by prominent scholars**, who perceive transnational networks as a challenge to representative democracy. In fact, the erosion of established accountability mechanisms causes inevitable tensions between the democratic scrutiny of public policy and regulation by experts, who do not assess the broader economic and social impact of their decisions.

> *"The global financial crisis brought into the spotlight the role of transnational networks in the regulation of international financial markets […] The autonomy of overly technocratic networks once considered one of their strengths, became the subject of strong criticism."*

These tensions are not diminished by the fact that the final outcome of the

standard-setting process is soft law instruments, which are indeed characterised by impressive effectiveness. In fact, in spite of their non-binding nature and the absence of sanctioning mechanisms, soft law standards produce a sense of legal commitment and compliance and are "voluntarily" incorporated into binding national rules and regulations. **The global financial crisis brought into the spotlight the role of transnational networks in the regulation of international financial markets**. Until then, the production of regulatory standards had remained sheltered from the reach of national checks and balances or domestic accountability mechanisms. **The crisis marked a turning point**, prompting a wave of reforms. This resulted in an increased politicization of the debate over financial regulation, both at the intergovernmental and national level. The crisis – and the massive bailouts of financial institutions in most G7 countries – put enormous strain on policymakers, triggering heated legislative debates. By questioning the validity of the market rationality theory, regulation emerged as the new trend. **A significant portion of the public opinion started to be concerned about financial regulation, advocating the urgent need for reform and action to contrast the predominant role of finance in society. The autonomy of overly technocratic networks once considered one of their strengths, became the subject of strong criticism**. As pointed out by Helleiner and Pagliari, **politicization is one of the legacies of the crisis**, yet its effects are far from being clearly understood. Increased politicization, in fact, might hamper transnational consensus or create a resistance to the transposition of standards into domestic legal orders. More importantly, **politicization is introducing a broader range of actors into the transnational financial regulation arena**, in addition to incumbent regulators, private sector representatives and academics. Regulatory networks have become a new "locus of contestation […] unsettling existing pathways to political engagement, restructuring political organizations and interest group landscapes, and generating incentives for the relevant parties to reorient their focus, agendas, and strategies" (Newman and Posner, 2018). This is not only true for private sector representatives, but also for institutions like **the European Parliament, which is seeking greater involvement in shaping Basel standards to preserve its role in banking prudential regulation at EU level**.

The European Union and the Basel Committee

The Basel Committee on Banking Supervision (BCBS) is the primary global standard-setter in the field of banking and financial regulation and provides a forum for cooperation on banking supervision. Its main objective is to strengthen the regulation, supervision and practices of banks worldwide, thereby promoting financial stability beyond the membership of the Committee.

> *"The production of financial standards should be opened up to involve non-technical players in policymaking matters, as a minimum through notice and comment procedures. In this way, a wider range of stakeholders, including civil society, could have access to the financial regulatory arena without affecting transnational networks' independence."*

In the aftermath of the global financial crisis, **the BCBS addressed key vulnerabilities in the banking system by revising the existing regulatory framework and adopting the so-called "Basel III framework"**. Basel standards, however, have no legal force and their nature is that of soft law. Nevertheless, they are implemented and applied in their own jurisdiction both by BCBS members and third countries, becoming embedded in domestic law. This phenomenon has been described as the "hardening" of soft law standards. Members of the Basel Committee on Banking Supervision (BCBS) are selected on the basis of the importance of their national banking sector to international financial stability. Membership is directly bestowed upon banking supervisory authorities and central banks. **Currently, the BCBS comprises 45 authorities from 28 jurisdictions**. However, only the authorities of nine EU countries – Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Sweden and the United Kingdom – sit on the BCBS. Among them, Sweden and the United Kingdom do not participate in the single currency, nor in the Banking Union. **Alongside the authorities of the above-mentioned EU member states, the European Union participates in the BCBS through the following institutions and agencies**: the European Commission, the European Banking Authority (**EBA**) and the European Central Bank in both its central banking (**ECB**) and supervisory capacity recently acquired under the Single Supervisory Mechanism (**SSM**) (hereinafter collectively referred to as the "EU institutions"). **EU institutions have, however, different roles**: on the one hand, **the European Commission and the EBA,** which might be seen as representing the EU as a whole, only **have observer status**; on the other, **the ECB and the SSM**, which might be considered to represent the euro area and the Banking Union, **are full members of the**

BCBS. This creates two dichotomies: a) between states with a banking sector which is important for financial stability (like Germany) and those without (like Poland); and b) between euro area members and non-euro area members. It is worth noting that EU participation in the BCBS has developed in parallel with European financial integration and that in the process the European Commission has lost prominence in favour of more specialized institutions. At present, it appears evident that **there is a sort of hierarchy among EU institutions in Basel: while the ECB in its double capacity plays a pivotal role, the European Commission and the EBA are relegated to a second tier**. At present, no formal procedure has been established for the definition of common negotiation positions at EU level. However, **a number of preparatory exchanges usually take place among all European institutions concerned, even if not on a systematic basis**. Often, before important meetings, a common understanding is sought by means of a teleconference organized by the ECB or the SSM. The SSM, in particular, is increasingly playing the role of coordinator of national authorities involved in the Basel Committee. Ethics and the internal cohesion of experts usually ensure that common goals are achieved.

What role for the European Parliament?

Basel standards are implemented in the EU legal framework in the form of directives and regulations. In 2013, the EU adopted a legislative package – made up of the Capital Requirements Directive IV and the Capital Requirements Regulation – to strengthen the regulation of the banking sector and to implement Basel III standards. Said EU legislation basically mirrors Basel standards, only adding some minor features and expanding the scope of application of prudential rules to banks of all sizes. **In recent years, the European Parliament has been very vocal in underlining its role as co-legislator on banking prudential regulation and the fact that the BCBS is a "non-legislative" standard setter that lacks transparency, accountability and democratic legitimacy**. In 2016, it contended that "national parliaments and the European Parliament should not be reduced to a role of mere rubber-stamping, but must be incorporated, actively and comprehensively, into the whole decision-making process". The fear that domestic rules of representative democracy could be circumvented by networks has also been voiced in the US in a letter sent by the Vice Chairman of the Committee on Financial Services of the House of Representatives of the United States to Janet Yellen, Chair of the Board of Governors of the Federal Reserve System.

"Finding the right balance between reliance on technical expertise and democratic legitimacy in international financial regulation will be the challenge for the years to come. The European Parliament, which is seeking to bolster its position in the design of Basel standards, might play a role in this endeavour."

In Europe, the European Parliament envisioned the possibility of **a) giving the ECB/SSM a binding mandate for negotiations** covering subject matters where the European Parliament is co-legislator with the Council, **b) adopting "guidance resolutions"**, setting out European Parliament general policy orientation, and **c) establishing a "financial dialogue" with a view to adopting guidelines on the position the EU should adopt in relevant fora**. While the first option would infringe the prerogatives of the Council and the independence of the ECB/SSM, the second and third options seem more feasible, but they would not make the European Parliament's voice heard in Basel. **To this end, I contend that the European Parliament should engage in BCBS public consultations on a regular basis. So far, it appears that BCBS public consultations have been mostly dominated by banking industry lobbies, private financial actors, supervisors and experts**. This notice and comment tool, however, enables even civil society groups to provide their direct input to the BCBS's activities. It would provide the European Parliament with the chance to directly convey its position to the BCBS, enhancing its links with the transnational level, thereby contributing to the decision-making process concerning financial standards, without affecting the BCBS's ability to achieve consensus. In playing a more significant role in the negotiation of financial standards, the European Parliament might also help the BCBS better assess their broader positive and negative impacts on the economy and society in general.

Conclusions

In the aftermath of the financial crisis, politicization and an increased distrust in technical knowledge have diminished technocracy as a basis of authority. I contend that, by virtue of their highly specialized knowledge, regulators ought to be considered better equipped than politicians to conceive technically sound standards. **There are, however, ways to increase the credibility of technocratic authorities, notably by enhancing their transparency, accountability and democratic legitimacy**. The aim should not be limited to the adoption of well-conceived financial standards, but also of measures that meet social values and broader public policy goals while preventing the predominance of a narrow set of interests or the hegemony of the financial paradigm. To this end, the production of financial standards should be opened up to involve non-technical players in policymaking matters, as a minimum through notice and comment procedures. In this way, a wider range of stakeholders, including civil society, could have access to the financial regulatory arena without affecting transnational networks' independence. **Finding the right balance between reliance on technical expertise and democratic legitimacy in international financial regulation will be the challenge for the years to come**. The European Parliament, which is seeking to bolster its position in the design of Basel standards, might play a role in this endeavour.

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